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EXTRAORDINARY

PART II—Section 1

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MINISTRY OF LAW

New Delhi, the 23rd May, 1950

The following Acts of Parliament received the assent of the President on the 20th May, 1950 and are hereby published for general information:—

THE ARMY ACT, 1950

No. XLVI OF 1950

An Act to consolidate and amend the law relating to the government of the regular Army.

[20th May, 1950]

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. **Short title and commencement.**—(1) This Act may be called the Army Act, 1950.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf.

2. **Persons subject to this Act.**—(1) The following persons shall be subject to this Act wherever they may be, namely:—

(a) officers, junior commissioned officers and warrant officers of the regular Army;

(b) persons enrolled under this Act;

(c) persons belonging to the Indian Reserve Forces;

(d) persons belonging to the Indian Supplementary Reserve Forces when called out for service or when carrying out the annual test;

(e) officers of the Territorial Army, when doing duty as such officers, and enrolled persons of the said Army when called out or embodied or attached to any regular forces, subject to such adaptations and modifications as may be made in the application of this Act to such persons under

sub-section (1) of section 9 of the Territorial Army Act, 1948 (LVI of 1948);

(f) persons holding commissions in the Army in India Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(g) officers appointed to the Indian Regular Reserve of Officers, when ordered on any duty or service for which they are liable as members of such reserve forces;

(h) persons belonging to the land forces of a Part B State, when such persons are attached to any body of the regular Army for service, or when the whole or a part of the said forces is acting with any body of the regular Army or is placed at the disposal of the Central Government in pursuance of a notification under section 5;

(i) persons not otherwise subject to military law who, on active service, in camp, on the march or at any frontier post specified by the Central Government by notification in this behalf, are employed by, or are in the service of, or are followers of, or accompany any portion of, the regular Army

(2) Every person subject to this Act under clauses (a) to (h) of sub-section (1) shall remain so subject until duly retired, discharged, released, dismissed or cashiered from the service.

3. Definitions.—In this Act, unless the context otherwise requires,—

(i) "active service", as applied to a person subject to this Act, means the time during which such person—

(a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or

(b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or

(c) is attached to or forms part of a force which is in military occupation of a foreign country;

(ii) "civil offence" means an offence which is triable by a criminal court;

(iii) "civil prison" means any jail or place used for the detention of any criminal prisoner under the Prisons Act, 1894 (IX of 1894), or under any other law for the time being in force;

(iv) "Commander-in-Chief" means the officer commanding-in-chief the regular Army;

(v) "commanding officer", when used in any provision of this Act, with reference to any separate portion of the regular Army or to any department thereof, means the officer whose duty it is under the regulations of the regular Army, or in the absence of any such regulations, by the custom of the service, to discharge with respect to that portion of the regular Army or that department, as the case may be, the functions of a commanding officer in regard to matters of the description referred to in that provision;

(vi) "corps" means any separate body of persons subject to this Act, which is prescribed as a corps for the purposes of all or any of the provisions of this Act;

(vii) "court-martial" means a court-martial held under this Act;

(viii) "criminal court" means a court of ordinary criminal justice in any part of India, other than the State of Jammu and Kashmir;

(ix) "department" includes any division or branch of a department;

(x) "enemy" includes all armed mutineers, armed rebels, armed rioters, pirates and any person in arms against whom it is the duty of any person subject to military law to act;

(xi) "the Forces" means the regular Army, Navy and Air Force or any part of any one or more of them.

(xii) "junior commissioned officer" means a person commissioned, gazetted or in pay as a junior commissioned officer in the regular Army or the Indian Reserve Forces, and includes a person holding a junior commission in the Indian Supplementary Reserve Forces, or the Territorial Army or a junior or equivalent commission in the land forces of a Part B State, who is for the time being subject to this Act;

(xiii) "military custody" means the arrest or confinement of a person according to the usages of the service and includes naval or air force custody;

(xiv) "military reward" includes any gratuity or annuity for long service or good conduct, good service pay or pension, and any other military pecuniary reward;

(xv) "non-commissioned officer" means a person holding a non-commissioned rank or an acting non-commissioned rank in the regular Army or the Indian Reserve Forces, and includes a non-commissioned officer or acting non-commissioned officer of the Indian Supplementary Reserve Forces or the territorial Army or the land forces of a Part B State, who is for the time being subject to this Act.

(xvi) "notification" means a notification published in the Official Gazette;

(xvii) "offence" means any act or omission punishable under this Act and includes a civil offence as hereinbefore defined,

(xviii) "officer" means a person commissioned, gazetted or in pay as an officer in the regular Army, and includes—

(a) an officer of the Indian Reserve Forces;

(b) an officer holding a commission in the Territorial Army granted by the President with designation of rank corresponding to that of an officer of the regular Army who is for the time being subject to this Act;

(c) an officer of the Army in India Reserve of Officers who is for the time being subject to this Act;

(d) an officer of the Indian Regular Reserve of Officers who is for the time being subject to this Act;

(e) an officer of the land forces of any Part B State who is for the time being subject to this Act,

(f) in relation to a person subject to this Act when serving under such conditions as may be prescribed, an officer of the Navy or Air Force;

but does not include a junior commissioned officer, warrant officer, petty officer or non-commissioned officer;

(xix) "prescribed" means prescribed by rules made under this Act;

(xx) "provost-marshall" means a person appointed as such under section 107 and includes any of his deputies or assistants or any other person legally exercising authority under him or on his behalf;

(xxi) "regular Army" means officers, junior commissioned officers, warrant officers, non-commissioned officers and other enrolled persons who

by their commission, warrant, terms of enrolment or otherwise, are liable to render continuously for a term military service to the Union in any part of the world, including persons belonging to the Reserve Forces and the Territorial Army when called out on permanent service;

(xiii) "regulation" includes a regulation made under this Act.

(xiv) "superior officer", when used in relation to a person subject to this Act, includes a junior commissioned officer, warrant officer and a non-commissioned officer, and, as regards persons placed under his orders, an officer, warrant officer, petty officer and non-commissioned officer of the Navy or Air Force;

(xv) "warrant officer" means a person appointed, gazetted or in pay as a warrant officer of the regular Army or of the Indian Reserve Forces, and includes a warrant officer of the Indian Supplementary Reserve Forces or of the Territorial Army or of the land forces of a Part B State who is for the time being subject to this Act;

(xvi) all words and expressions used but not defined in this Act and defined in the Indian Penal Code (Act XLV of 1860) shall be deemed to have the meanings assigned to them in that Code.

CHAPTER II

SPECIAL PROVISIONS FOR THE APPLICATION OF ACT IN CERTAIN CASES

4. Application of Act to certain forces under Central Government.—(1) The Central Government may, by notification, apply, with or without modifications, all or any of the provisions of this Act to any force raised and maintained in India under the authority of that Government, including any force maintained by a Part B State, and suspend the operation of any other enactment for the time being applicable to the said force.

(2) The provisions of this Act so applied shall have effect in respect of persons belonging to the said force as they have effect in respect of persons subject to this Act holding in the regular Army the same or equivalent rank as the aforesaid persons hold for the time being in the said force.

(3) The provisions of this Act so applied shall also have effect in respect of persons who are employed by or are in the service of or are followers of or accompany any portion of the said force as they have effect in respect of persons subject to this Act under clause (i) of section 2.

(4) While any of the provisions of this Act apply to the said force, the Central Government may, by notification, direct by what authority any jurisdiction, powers or duties incident to the operation of these provisions shall be exercised or performed in respect of the said force.

5. Application of Act to forces of Part B States.—(1) The Central Government may, by notification, direct that any person or persons belonging to the land forces of any Part B State shall be attached to any body of the regular Army or that the whole or a part of the said forces shall act with any body of the regular Army, or shall be placed at the disposal of the Central Government, and thereupon the persons so attached and members of the said force shall become subject to this Act.

(2) The relative rank of officers, junior commissioned officers, warrant officers and non-commissioned officers of such forces and of the regular Army shall be such as may be determined by the Central Government or by such other authority as may be prescribed.

6. Special provision as to rank in certain cases.—(1) The Central Government may, by notification, direct that any persons or class of persons subject to this Act under clause (i) of section 2 shall be so subject as officers, junior commissioned officers, warrant officers or non-commissioned officers and may authorise any officer to give a like direction and to cancel such direction.

(2) All persons subject to this Act other than officers, junior commissioned officers, warrant officers and non-commissioned officers shall, if they are not persons in respect of whom a notification or direction under sub-section (1) is in force, be deemed to be of a rank inferior to that of a non-commissioned officer.

7. Commanding officer of persons subject to military law under clause (i) of section 2.—(1) Every person subject to this Act under clause (i) of section 2 shall, for the purposes of this Act, be deemed to be under the commanding officer of the corps, department or detachment, if any, to which he is attached, and, if he is not so attached, under the command of any officer who may for the time being be named as his commanding officer by the officer commanding the force with which such person for the time being is serving, or any other prescribed officer, or, if no such officer is named or prescribed, under the command of the said officer commanding the force.

(2) An officer commanding a force shall not place a person subject to this Act under clause (i) of section 2 under the command of an officer of rank inferior to that of such person, if there is present at the place where such person is any officer of a higher rank under whose command he can be placed.

8. Officers exercising powers in certain cases.—(1) Whenever persons subject to this Act are serving under an officer commanding any military organisation, not in this section specifically named and being in the opinion of the Central Government not less than a brigade, that Government may prescribe the officer by whom the powers, which under this Act may be exercised by officers commanding armies, army corps, divisions and brigades, shall, as regards such persons, be exercised.

(2) The Central Government may confer such powers, either absolutely or subject to such restrictions, reservations, exceptions and conditions, as it may think fit.

9. Power to declare persons to be on active service.—Notwithstanding anything contained in clause (i) of section 3, the Central Government may, by notification, declare that any person or class of persons subject to this Act shall, with reference to any area in which they may be serving or with reference to any provision of this Act or of any other law for the time being in force be deemed to be on active service within the meaning of this Act.

CHAPTER III COMMISSION, APPOINTMENT AND ENROLMENT

10. Commission and appointment.—The President may grant, to such persons as he thinks fit a commission as an officer, or as a junior commissioned officer or as an warrant officer of the regular Army.

11. Ineligibility of aliens for enrolment.—No person who is not a citizen of India shall, except with the consent of the Central Government signified in writing, be enrolled in the regular Army.

Provided that nothing contained in this section shall bar the enrolment of the subjects of Nepal in the regular Army.

12. Ineligibility of females for enrolment or employment.—No female shall be eligible for enrolment or employment in the regular Army, except in such corps, department, branch or other body forming part of, or attached to any portion of, the regular Army as the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that nothing contained in this section shall affect the provisions of any law for the time being in force providing for the raising and maintenance of any service auxiliary to the regular Army or any branch thereof in which females are eligible for enrolment or employment.

13. Procedure before enrolling officer.—Upon the appearance before the prescribed enrolling officer of any person desirous of being enrolled, the enrolling officer shall read and explain to him, or cause to be read and explained to him in his presence, the conditions of the service for which he is to be enrolled; and shall put to him the questions set forth in the prescribed form of enrolment, and shall, after having cautioned him that if he makes a false answer to any such question he will be liable to punishment under this Act, record or cause to be recorded his answer to each such question.

14. Mode of enrolment.—If, after complying with the provisions of section 13, the enrolling officer is satisfied that the person desirous of being enrolled fully understands the questions put to him and consents to the conditions of service, and if such officer perceives no impediment, he shall sign and shall also cause such person to sign the enrolment paper, and such person shall thereupon be deemed to be enrolled.

15. Validity of enrolment.—Every person who has for the space of three months been in receipt of pay as a person enrolled under this Act and been borne on the rolls of any corps or department shall be deemed to have been duly enrolled, and shall not be entitled to claim his discharge on the ground of any irregularity or illegality in his enrolment or on any other ground whatsoever; and if any person, in receipt of such pay and borne on the rolls as aforesaid, claims his discharge before the expiry of three months from his enrolment, no such irregularity or illegality or other ground shall, until he is discharged in pursuance of his claim, affect his position as an enrolled person under this Act or invalidate any proceeding, act or thing taken or done prior to his discharge.

16. Persons to be attested.—The following persons shall be attested, namely:—

(a) all persons enrolled as combatants;

(b) all persons selected to hold a non-commissioned or acting non-commissioned rank; and

(c) all other persons subject to this Act as may be prescribed by the Central Government.

17. Mode of attestation.—(1) When a person who is to be attested is reported fit for duty, or has completed the prescribed period of probation, an oath or affirmation shall be administered to him in the prescribed form by his commanding officer in front of his corps or such portion thereof or such members of his department as may be present, or by any other prescribed person.

(2) The form of oath or affirmation prescribed under this section shall contain a promise that the person to be attested will bear true allegiance to the Constitution of India as by law established, and that he will serve in the regular Army and go wherever he is ordered by land, sea or air, and that he will obey all commands of any officer set over him, even to the peril of his life.

(3) The fact of an enrolled person having taken the oath or affirmation directed by this section to be taken shall be entered on his enrolment paper, and authenticated by the signature of the officer administering the oath or affirmation.

CHAPTER IV

CONDITIONS OF SERVICE

18. Tenure of service under the Act.—Every person subject to this Act shall hold office during the pleasure of the President.

19. Termination of service by Central Government.—Subject to the provisions of this Act and the rules and regulations made thereunder the Central Government may dismiss, or remove from the service, any person subject to this Act.

20. Dismissal, removal or reduction by Commander-in-Chief and by other officers.—(1) The Commander-in-Chief may dismiss or remove from the service any person subject to this Act other than an officer

(2) The Commander-in-Chief may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer.

(3) An officer having power not less than a brigade or equivalent commander or any prescribed officer may dismiss or remove from the service any person serving under his command other than an officer or a junior commissioned officer.

(4) Any such officer as is mentioned in sub-section (3) may reduce to a lower grade or rank or the ranks, any warrant officer or any non-commissioned officer under his command.

(5) A warrant officer reduced to the ranks under this section shall not, however, be required to serve in the ranks as a sepoy.

(6) The commanding officer of an acting non-commissioned officer may order him to revert to his permanent grade as a non-commissioned officer, or if he has no permanent grade above the ranks, to the ranks.

(7) The exercise of any power under this section shall be subject to the said provisions contained in this Act and the rules and regulations made thereunder.

21. Power to modify certain fundamental rights in their application to persons subject to this Act.—Subject to the provisions of any law for the time being in force relating to the regular Army or to any branch thereof, the Central Government may, by notification, make rules restricting to such extent and in such manner as may be necessary the right of any person subject to this Act--

(a) to be a member of, or to be associated in any way with, any trade union or labour union, or any class of trade or labour unions or any society, institution or association, or any class of societies, institutions or associations;

(b) to attend or address any meeting or to take part in any demonstration organised by any body of persons for any political or other purposes;

(c) to communicate with the press or to publish or cause to be published any book, letter or other document.

22. Retirement, release or discharge.—Any person subject to this Act may be retired, released or discharged from the service by such authority and in such manner as may be prescribed.

23. Certificate on termination of service.—Every junior commissioned officer, warrant officer, or enrolled person who is dismissed, removed, discharged, retired or released from the service shall be furnished by his commanding

officer with a certificate, in the language which is the mother tongue of such person and also in the English language setting forth—

- (a) the authority terminating his service;
- (b) the cause for such termination; and
- (c) the full period of his service in the regular Army.

24. Discharge or dismissal when out of India.—(1) Any person enrolled under this Act who is entitled under the conditions of his enrolment to be discharged, or whose discharge is ordered by competent authority, and who, when he is so entitled or ordered to be discharged, is serving out of India, and requests to be sent to India, shall, before being discharged, be sent to India with all convenient speed.

(2) Any person enrolled under this Act who is dismissed from the service and who, when he is so dismissed, is serving out of India, shall be sent to India with all convenient speed.

(3) Where any such person as is mentioned in sub-section (2) is sentenced to dismissal combined with any other punishment, such other punishment, or, in the case of a sentence of transportation or imprisonment, a portion of such sentence may be inflicted before he is sent to India.

(4) For the purposes of this section, the word "discharge" shall include release, and the word "dismissal" shall include removal.

CHAPTER V

SERVICE PRIVILEGES

25. Authorised deductions only to be made from pay.—The pay of every person subject to this Act due to him as such under any regulation for the time being in force shall be paid without any deduction other than the deductions authorised by or under this or any other Act.

26. Remedy of aggrieved persons other than officers.—(1) Any person subject to this Act other than an officer who deems himself wronged by any superior or other officer may, if not attached to a troop or company, complain to the officer under whose command or orders he is serving; and may, if attached to a troop or company, complain to the officer commanding the same.

(2) When the officer complained against is the officer to whom any complaint should, under sub-section (1), be preferred, the aggrieved person may complain to such officer's next superior officer.

(3) Every person giving up such complaint shall make as complete an investigation as may be possible for giving full redress to the complainant; or where such officer's superior authority

(4) Every such complaint shall be preferred in such manner as may from time to time be specified by the proper authority.

(5) The Central Government may revise any decision by the Commander-in-Chief under sub-section (2), but, subject thereto, the decision of the Commander-in-Chief shall be final.

27. Remedy of aggrieved officers. Any officer who deems himself wronged by his superior officer or any superior officer and who on due application made to his commanding officer does not receive the redress to which he considers himself entitled may complain to the Central Government in such manner as may from time to time be specified by the proper authority.

28. Immunity from attachment. Neither the arms, clothes, equipment, accoutrements or necessities of any person subject to this Act, nor any animal used by him for the discharge of his duty, shall be seized, nor shall the pay and

allowances of any such person or any part thereof be attached, by direction of any civil or revenue court or any revenue officer in satisfaction of any decree or order enforceable against him.

29. Immunity from arrest for debt.—(1) No person subject to this Act shall, so long as he belongs to the Forces, be liable to be arrested for debt under any process issued by, or by the authority of, any civil or revenue court or revenue officer.

(2) The judge of any such court or the said officer may examine into any complaint made by such person or his superior officer of the arrest of such person contrary to the provisions of this section and may, by warrant under his hand, discharge the person, and award reasonable costs to the complainant, who may recover those costs in like manner as he might have recovered costs awarded to him by a decree against the person obtaining the process.

(3) For the recovery of such costs no court-fee shall be payable by the complainant.

30. Immunity of persons attending courts-martial from arrest.—(1) No presiding officer or member of a court-martial, no judge advocate, no party to any proceeding before a court-martial, or his legal practitioner or agent, and no witness acting in obedience to a summons to attend a court-martial shall, while proceeding to, attending, or returning from, a court-martial, be liable to arrest under civil or revenue process.

(2) If any such person is arrested under any such process, he may be discharged by order of the court-martial.

31. Privileges of reservists.—Every person belonging to the Indian Reserve Forces shall, when called out for or engaged in or returning from, training or service, be entitled to all the privileges accorded by sections 28 and 29 to a person subject to this Act.

32. Priority in respect of army personnel's litigation.—(1) On the presentation to any court by or on behalf of any person subject to this Act of a certificate from the proper military authority of leave of absence having been granted to or applied for by him for the purpose of prosecuting or defending any suit or other proceeding in such court the court shall, on the application of such person, arrange, so far as may be possible, for the hearing and final disposal of such suit or other proceeding within the period of the leave so granted or applied for.

(2) The certificate from the proper military authority shall state the first and last day of the leave or intended leave, and set forth a description of the case with respect to which the leave was granted or applied for.

(3) No fee shall be payable to the court in respect of the presentation of any such certificate, or of any application by or on behalf of any such person, for priority for the hearing of his case.

(4) Where the court is unable to arrange for the hearing and final disposal of the suit or other proceeding within the period of such leave or intended leave as aforesaid, it shall record its reasons for its inability to do so, and shall cause a copy thereof to be furnished to such person on his application without any payment whatever by him in respect either of the application for such copy or of the copy itself.

(5) If in any case a question arises as to the proper military authority qualified to grant such certificate as aforesaid, such question shall at once be referred by the court to an officer having power not less than a brigade or equivalent commander whose decision shall be final.

33. Saving of rights and privileges under other laws.—The rights and privileges specified in the preceding sections of this Chapter shall be in addition to, and not in derogation of, any other rights and privileges conferred on persons subject to this Act or on members of the regular Army, Navy and Air Force generally by any other law for the time being in force.

CHAPTER VI

OFFENCES

34. Offences in relation to the enemy and punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or

(b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or

(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or

(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or

(f) treacherously or through cowardice sends a flag of truce to the enemy; or

(g) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

(h) in time of action leaves his commanding officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or

(i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or

(j) knowingly harbours or protects an enemy not being a prisoner; or

(k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or

(l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

35. Offences in relation to the enemy and not punishable with death.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is taken prisoner, by want of due precaution, or through disobedience of orders, or wilful neglect of duty, or having been taken prisoner, fails to rejoin his service when able to do so; or

(b) without due authority holds correspondence with or communicates intelligence to the enemy or having come by the knowledge of any such correspondence or communication, wilfully omits to discover it immediately to his commanding or other superior officer; or

(c) without due authority sends a flag of truce to the enemy;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

36. Offences punishable more severely on active service than at other times.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) forces a safeguard, or forces or uses criminal force to a sentry; or

(b) breaks into any house or other place in search of plunder; or

(c) being a sentry sleeps upon his post, or is intoxicated; or

(d) without orders from his superior officer leaves his guard, picket, patrol or post; or

(e) intentionally or through neglect occasions a false alarm in camp, garrison, or quarters; or spreads reports calculated to create unnecessary alarm or despondency; or

(f) makes known the parole, watchword or countersign to any person not entitled to receive it; or knowingly gives a parole, watchword or countersign different from what he received;

shall, on conviction by court-martial,

if he commits any such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits any such offence when not on active service, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

37. Mutiny.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) begins, incites, causes, or conspires with any other persons to cause any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or

(b) joins in any such mutiny; or

(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or

(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or

(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.

38. Desertion and aiding desertion.—(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by court-martial,

if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and

if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who, knowingly harbours any such deserter shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

(3) Any person subject to this Act who, being cognizant of any desertion or attempt at desertion of a person subject to this Act, does not forthwith give notice to his own or some other superior officer, or take any steps in his power to cause such person to be apprehended, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

39. Absence without leave.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) absents himself without leave; or

(b) without sufficient cause overstays leave granted to him; or

(c) being on leave of absence and having received information from proper authority that any corps, or portion of a corps, or any department, to which he belongs, has been ordered on active service, fails, without sufficient cause, to rejoin without delay; or

(d) without sufficient cause fails to appear at the time fixed at the parade or place appointed for exercise or duty; or

(e) when on parade, or on the line of march, without sufficient cause or without leave from his superior officer quits the parade or line of march; or

(f) when in camp or garrison or elsewhere, is found beyond any limits fixed, or in any place prohibited, by any general, local or other order, without a pass or written leave from his superior officer; or

(g) without leave from his superior officer, without due cause, absents himself from any school when duly ordered to attend there; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

40. Striking or threatening superior officers.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) uses criminal force to or resents his superior officer; or

(b) uses threatening language to such officer;

(c) uses insubordinate language to such officer

shall, on conviction by court-martial,

if such officer is at the time in the execution of his office or, if the offence is committed on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

in other cases be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned:

Provided that in the case of an offence specified in clause (c), the imprisonment shall not exceed five years.

41. Disobedience to superior officer.—(1) Any person subject to this Act who disobeys in such manner as to show a wilful defiance of authority any lawful command given personally by his superior officer in the execution of his office whether the same is given orally, or in writing or by signal or otherwise, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

(2) Any person subject to this Act who disobeys any lawful command given by his superior officer shall on conviction by court-martial,

if he commits such offence when on active service, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if he commits such offence when not on active service, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

42. Insubordination and obstruction.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being concerned in any quarrel, affray, or disorder, refuses to obey any officer, though of inferior rank, who orders him into arrest, or uses criminal force to or assaults any such officer; or

(b) uses criminal force to, or assaults any person, whether subject to this Act or not, in whose custody he is lawfully placed, and whether he is or is not his superior officer; or

(c) resists an escort whose duty it is to apprehend him or to have him in charge; or

(d) breaks out of barracks, camp or quarters; or

(e) neglects to obey any general, local or other order; or

(f) impedes the provost-marshal or any person lawfully acting on his behalf, or when called upon, refuses to assist in the execution of his duty a provost-marshal or any person lawfully acting on his behalf; or

(g) uses criminal force to or assaults any person bringing provisions or supplies to the forces;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend, in the case of the offences specified in clauses (d) and (e) to two years, and in the case of the offences specified in the other clauses to ten years, or such less punishment as is in this Act mentioned.

43. Fraudulent enrolment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) without having obtained a regular discharge from the corps or department to which he belongs, or otherwise fulfilled the conditions enabling him to enrol or enter, enrols himself in, or enters the same or any other corps or department or any part of the naval or air forces of India or the Territorial Army; or

(b) is concerned in the enrolment in any part of the Forces of any person when he knows or has reason to believe such person to be so circumstanced that by enrolling he commits an offence against this Act;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

44. False answers on enrolment.—Any person having become subject to this Act who is discovered to have made at the time of enrolment a wilfully false answer to any question set forth in the prescribed form of enrolment which has been put to him by the enrolling officer before whom he appears for the purpose of being enrolled shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

45. Unbecoming conduct.—Any officer, junior commissioned officer or warrant officer who behaves in a manner unbecoming his position and the character expected of him shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is a junior commissioned officer or a warrant officer, be liable to be dismissed or to suffer such less punishment as is in this Act mentioned.

46. Certain forms of disgraceful conduct.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) is guilty of any disgraceful conduct of a cruel, indecent or unnatural kind; or

(b) malingers, or feigns, or produces disease or infirmity in himself, or intentionally delays his cure or aggravates his disease or infirmity; or

(c) with intent to render himself or any other person unfit for service, voluntarily causes hurt to himself or that person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

47. Ill-treating a subordinate.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who uses criminal force to or otherwise ill-treats any person subject to this Act, being his subordinate in rank or position, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

48. Intoxication.—(1) Any person subject to this Act who is found in a state of intoxication, whether on duty or not, shall, on conviction by court-martial, if he is an officer, be liable to be cashiered or to suffer such less punishment as is in this Act mentioned; and, if he is not an officer, be liable, subject to the provisions of sub-section (2), to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

(2) Where an offence of being intoxicated is committed by a person other than an officer when not on active service or not on duty, the period of imprisonment awarded shall not exceed six months.

49. Permitting escape of person in custody.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when in command of a guard, picket, patrol or post, releases without proper authority, whether wilfully or without reasonable excuse, any person committed to his charge, or refuses to receive any prisoner or person so committed; or

(b) wilfully or without reasonable excuse allows to escape any person who is committed to his charge, or whom it is his duty to keep or guard;

shall, on conviction by court-martial, be liable, if he has acted wilfully to suffer imprisonment for a term which may extend to fourteen years or such

less punishment as is in this Act mentioned; and if he has not acted wilfully, to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

50. Irregularity in connection with arrest or confinement.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) unnecessarily detains a person in arrest or confinement without bringing him to trial, or fails to bring his case before the proper authority for investigation; or

(b) having committed a person to military custody fails without reasonable cause to deliver at the time of such committal, or as soon as practicable, and in any case within forty-eight hours thereafter, to the officer or other person into whose custody the person arrested is committed, an account in writing signed by himself of the offence with which the person so committed is charged;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to two years or such less punishment as is in this Act mentioned.

51. Escape from custody.—Any person subject to this Act who, being in lawful custody, escapes or attempts to escape, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

52. Offences in respect of property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits theft of any property belonging to the Government, or to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law; or

(b) dishonestly misappropriates or converts to his own use any such property; or

(c) commits criminal breach of trust in respect of any such property; or

(d) dishonestly receives or retains any such property in respect of which any of the offences under clauses (a), (b) and (c) has been committed, knowing or having reason to believe the commission of such offence; or

(e) wilfully destroys or injures any property of the Government entrusted to him; or

(f) does any other thing with intent to defraud, or to cause wrongful gain to one person or wrongful loss to another person;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

53. Extortion and corruption.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) commits extortion; or

(b) without proper authority exacts from any person money, provisions or service;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

54. Making away with equipment.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes away with, or is concerned in making away with, any arms, ammunition, equipment, instruments, tools, clothing or any other thing being the property of the Government issued to him for his use or entrusted to him; or

(b) loses by neglect anything mentioned in clause (a); or

(c) sells, pawns, destroys or defaces any medal or decoration granted to him;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend in the case of the offences specified in clause (a) to ten years, and in the case of the offences specified in the other clauses to five years, or such less punishment as is in this Act mentioned.

55. Injury to property.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) destroys or injures any property mentioned in clause (a) of section 54 or any property belonging to any military, naval or air force mess, band or institution, or to any person subject to military, naval or air force law, or serving with, or attached to, the regular Army; or

(b) commits any act which causes damage to, or destruction of, any property of the Government by fire; or

(c) kills, injures, makes away with, ill-treats or loses any animal entrusted to him;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and if he has acted without reasonable excuse, to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

56. False accusations.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) makes a false accusation against any person subject to this Act, knowing or having reason to believe such accusation to be false; or

(b) in making a complaint under section 26 or section 27 makes any statement affecting the character of any person subject to this Act, knowing or having reason to believe such statement to be false or knowingly and wilfully suppresses any material facts;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

57. Falsifying official documents and false declaration.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) in any report, return, list, certificate, book or other document made or signed by him, or of the contents of which it is his duty to ascertain the accuracy, knowingly makes, or is privy to the making of any false or fraudulent statement; or

(b) in any document of the description mentioned in clause (a) knowingly makes, or is privy to the making of, any omission, with intent to defraud; or

(c) knowingly and with intent to injure any person, or knowingly and with intent to defraud, suppresses, defaces, alters or makes away with any document which it is his duty to preserve or produce; or

(d) where it is his official duty to make a declaration respecting any matter, knowingly makes a false declaration; or

(e) obtains for himself, or for any other person, any pension, allowance or other advantage or privilege by a statement which is false, and which he either knows or believes to be false or does not believe to be true, or by making or using a false entry in any book or record or by making any document containing a false statement, or by omitting to make a true entry or document containing a true statement;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

58. Signing in blank and failure to report.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) when signing any document relating to pay, arms, ammunition, equipment, clothing, supplies or stores, or any property of the Government fraudulently leaves in blank any material part for which his signature is a voucher; or

(b) refuses or by culpable neglect omits to make or send a report or return which it is his duty to make or send;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

59. Offences relating to courts-martial.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being duly summoned or ordered to attend as a witness before a court-martial, wilfully or without reasonable excuse, makes default in attending; or

(b) refuses to take an oath or make an affirmation legally required by a court-martial to be taken or made; or

(c) refuses to produce or deliver any document in his power or control legally required by a court-martial to be produced or delivered by him; or

(d) refuses when a witness to answer any question which he is by law bound to answer; or

(e) is guilty of contempt of court-martial by using insulting or threatening language, or by causing any interruption or disturbance in the proceedings of such court;

shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as is in this Act mentioned.

60. False evidence.—Any person subject to this Act who, having been duly sworn or affirmed before any court-martial or other court competent under this Act to administer an oath or affirmation, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

61. Unlawful detention of pay.—Any officer, junior commissioned officer, warrant officer or non-commissioned officer who, having received the pay of a person subject to this Act unlawfully detains or refuses to pay the same when due, shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to ten years or such less punishment as is in this Act mentioned.

62. Offences in relation to aircraft and flying.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) wilfully or without reasonable excuse damages, destroys or loses any aircraft or aircraft material belonging to the Government; or

(b) is guilty of any act or neglect likely to cause such damage, destruction or loss; or

(c) without lawful authority disposes of any aircraft or aircraft material belonging to the Government; or

(d) is guilty of any act or neglect in flying, or in the use of any aircraft, or in relation to any aircraft or aircraft material, which causes or is likely to cause loss of life or bodily injury to any person; or

(e) during a state of war, wilfully and without proper occasion, or negligently, causes the sequestration, by or under the authority of a neutral State, or the destruction in a neutral State of any aircraft belonging to the Government;

shall, on conviction by court-martial, be liable, if he has acted wilfully, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned, and, in any other case, to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned.

63. Violation of good order and discipline.—Any person subject to this Act who is guilty of any act or omission which, though not specified in this Act, is prejudicial to good order and military discipline shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

64. Miscellaneous offences.—Any person subject to this Act who commits any of the following offences, that is to say,—

(a) being in command at any post or on the march, and receiving a complaint that any one under his command has beaten or otherwise maltreated or oppressed any person, or has disturbed any fair or market, or committed any riot or trespass, fails to have due reparation made to the injured person or to report the case to the proper authority; or

(b) by defiling any place of worship, or otherwise, intentionally insults the religion or wounds the religious feelings of any person; or

(c) attempts to commit suicide, and in such attempt does any act towards the commission of such offence; or

(d) being below the rank of warrant officer, when off duty, appears, without proper authority, in or about camp or cantonments, or in or about, or when going to or returning from, any town or bazar, carrying a rifle, sword or other offensive weapon; or

(e) directly or indirectly accepts or obtains, or agrees to accept or attempts to obtain, for himself or for any other person, any gratification as a motive or reward for procuring the enrolment of any person, or leave of absence, promotion or any other advantage or indulgence for any person in the service; or

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(f) commits any offence against the property or person of any inhabitant of, or resident in, the country in which he is serving; shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.

65. Attempt.—Any person subject to this Act who attempts to commit any of the offences specified in sections 34 to 64 inclusive and in such attempt does any act towards the commission of the offence shall, on conviction by court-martial, where no express provision is made by this Act for the punishment of such attempt, be liable,

if the offence attempted to be committed is punishable with death, to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned; and

if the offence attempted to be committed is punishable with imprisonment, to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

66. Abetment of offences that have been committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive shall, on conviction by court-martial, if the Act abetted is committed in consequence of the abetment and no express provision is made by this Act for the punishment of such abetment, be liable to suffer the punishment provided for that offence or such less punishment as is in this Act mentioned.

67. Abetment of offences punishable with death and not committed.—Any person subject to this Act who abets the commission of any of the offences punishable with death under sections 34, 37 and sub-section (1) of section 38 shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to fourteen years or such less punishment as is in this Act mentioned.

68. Abetment of offences punishable with imprisonment and not committed.—Any person subject to this Act who abets the commission of any of the offences specified in sections 34 to 64 inclusive and punishable with imprisonment shall, on conviction by court-martial, if that offence be not committed in consequence of the abetment, and no express provision is made by this Act for the punishment of such abetment, be liable to suffer imprisonment for a term which may extend to one-half of the longest term provided for that offence or such less punishment as is in this Act mentioned.

69. Civil offences.—Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—

(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and

(b) in any other case, he shall be liable to suffer any punishment, other than whipping, assigned for the offence by the law in force in India, or imprisonment for a term which may extend to seven years, or such less punishment as is in this Act mentioned

70. Civil offences not triable by court-martial.—A person subject to this Act who commits an offence of murder against a person not subject to military, naval or air force law, or of culpable homicide not amounting to murder against such a person or of rape in relation to such a person, shall not be deemed to be guilty of an offence against this Act and shall not be tried by a court-martial, unless he commits any of the said offences—

- (a) while on active service, or
- (b) at any place outside India, or

(c) at a frontier post specified by the Central Government by notification in this behalf.

Explanation.—In this section and in section 69, “India” does not include the State of Jammu and Kashmir.

CHAPTER VII

PUNISHMENTS

71. Punishments awardable by courts-martial.—Punishments may be inflicted in respect of offences committed by persons subject to this Act and convicted by courts-martial, according to the scale following, that is to say,—

- (a) death;
- (b) transportation for life or for any period not less than seven years;
- (c) imprisonment, either rigorous or simple, for any period not exceeding fourteen years;
- (d) cashiering, in the case of officers;
- (e) dismissal from the service;
- (f) reduction to the ranks or to a lower rank or grade or place in the list of their rank, in the case of warrant officers; and reduction to the ranks or to a lower rank or grade, in the case of non-commissioned officers:

Provided that a warrant officer reduced to the ranks shall not be required to serve in the ranks as a sepoy;

- (g) forfeiture of seniority of rank, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers; and forfeiture of all or any part of their service for the purpose of promotion, in the case of any of them whose promotion depends upon length of service;
- (h) forfeiture of service for the purpose of increased pay, pension or any other prescribed purpose;
- (i) severe reprimand or reprimand, in the case of officers, junior commissioned officers, warrant officers and non-commissioned officers;
- (j) forfeiture of pay and allowances for a period not exceeding three months for an offence committed on active service;
- (k) forfeiture in the case of a person sentenced to cashiering or dismissal from the service of all arrears of pay and allowances and other public money due to him at the time of such cashiering or dismissal;
- (l) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

72. Alternative punishments awardable by court-martial.—Subject to the provisions of this Act, a court-martial may, on convicting a person subject to this Act of any of the offences specified in sections 84 to 68 inclusive, award either the particular punishment with which the offence is stated in the said sections to be punishable, or, in lieu thereof, any one of the punishments lower in the scale set out in section 71, regard being had to the nature and degree of the offence.

73. Combination of punishments.—A sentence of a court-martial may award in addition to or without any one other punishment, the punishment specified in clause (d) or clause (e) of section 71 and any one or more of the punishments specified in clauses (f) to (l) of that section.

74. Cashiering of officers.—An officer shall be sentenced to be cashiered before he is awarded any of the punishments specified in clauses (a) to (c) of section 71.

75. Field punishment.—Where any person subject to this Act and under the rank of warrant officer commits any offence on active service, it shall be lawful for a court-martial to award for that offence any such punishment as is prescribed as a field punishment. Field punishment shall be of the character of personal restraint or of hard labour but shall not be of a nature to cause injury to life or limb and shall not include flogging.

76. Position of field punishment in scale of punishments.—Field punishment shall for the purpose of commutation be deemed to stand next below dismissal in the scale of punishments specified in section 71.

77. Result of certain punishments in the case of a warrant officer or non-commissioned officer.—A warrant officer or a non-commissioned officer sentenced by a court-martial to transportation, imprisonment, field punishment or dismissal from the service shall be deemed to be reduced to the ranks.

78. Retention in the ranks of a person convicted on active service.—When, on active service, any enrolled person has been sentenced by a court-martial to dismissal, or to transportation or imprisonment whether combined with dismissal or not, the prescribed officer may direct that such person may be retained to serve in the ranks, and such service shall be reckoned as part of his term of transportation or imprisonment, if any.

79. Punishments otherwise than by court-martial.—Punishments may also be inflicted in respect of offences committed by persons subject to this Act without the intervention of a court-martial and in the manner stated in sections 80, 83, 84 and 85.

80. Punishment of persons other than officers, junior commissioned officers and warrant officers.—Subject to the provisions of section 81, a commanding officer or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief, may, in the prescribed manner, proceed against a person subject to this Act otherwise than as an officer, junior commissioned officer or warrant officer who is charged with an offence under this Act and award such person, to the extent prescribed, one or more of the following punishments, that is to say,—

- (a) imprisonment in military custody up to twenty-eight days;
- (b) detention up to twenty-eight days;
- (c) confinement to the lines up to twenty-eight days;
- (d) extra guards or duties;
- (e) deprivation of a position of the nature of an appointment or of corps or working pay, and in the case of non-commissioned officers, also deprivation of acting rank or reduction to a lower grade of pay;
- (f) forfeiture of good service and good conduct pay;
- (g) severe reprimand or reprimand;
- (h) fine up to fourteen days' pay in any one month;
- (i) penal deductions under clause (g) of section 91;

(i) any prescribed field punishment up to twenty-eight days, in the case of a person on active service.

81. Limit of punishments under section 80—(1) An award of punishment under section 80 shall not include field punishment in addition to one or more of the punishments specified in clauses (a), (b) and (c) of that section.

(2) In the case of an award of two or more of the punishments specified in clauses (a), (b), (c) and (d) of the said section, the punishment specified in clause (c) or clause (d) shall take effect only at the end of the punishment specified in clause (a) or clause (b).

(3) When two or more of the punishments specified in the said clauses (a), (b) and (c) are awarded to a person conjointly, or when already undergoing one or more of the said punishments, the whole extent of the punishments shall not exceed in the aggregate forty-two days.

(4) The punishments specified in clauses (a), (b), (c) and (j), of section 80 shall not be awarded to any person who is of the rank of non-commissioned officer or was, at the time of committing the offence for which he is punished, of such rank.

The punishment specified in clause (g) of the said section shall not be awarded to any person below the rank of a non-commissioned officer.

82. Punishments in addition to those specified in section 80.—The Commander-in-Chief may, with the consent of the Central Government, specify such other punishments as may be awarded under section 80 in addition to or without any of the punishments specified in the said section, and the extent to which such other punishments may be awarded.

83. Punishment of officers, junior commissioned officers and warrant officers by brigade commanders and others—An officer having power not less than a brigade, or an equivalent commander or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief may in the prescribed manner, proceed against an officer below the rank of a field officer, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act and award one or more of the following punishments, that is to say,—

(a) severe reprimand or reprimand;

(b) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

84. Punishment of officers, junior commissioned officers and warrant officers by area commanders and others.—An officer having power not less than an area commander or an equivalent commander or an officer empowered to convene a general court-martial or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief may, in the prescribed manner, proceed against an officer below the rank of lieutenant-colonel, a junior commissioned officer or a warrant officer, who is charged with an offence under this Act, and award one or more of the following punishments, that is to say,—

(a) forfeiture of seniority, or in the case of any of them whose promotion depends upon length of service, forfeiture of service for the purpose of promotion for a period not exceeding twelve months, but subject to the right of the accused previous to the award to elect to be tried by a court-martial;

(b) severe reprimand or reprimand;

(c) stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

85. Punishment of junior commissioned officers.—A commanding officer or such other officer as is, with the consent of the Central Government, specified by the Commander-in-Chief may, in the prescribed manner, proceed against a junior commissioned officer who is charged with an offence under this Act and award the punishment of stoppage of pay and allowances until any proved loss or damage occasioned by the offence of which he is convicted is made good.

86. Transmission of proceedings.—In every case in which punishment has been awarded under any of the sections 83, 84 and 85, certified true copies of the proceedings shall be forwarded, in the prescribed manner, by the officer awarding the punishment, to a superior military authority as defined in section 88.

87. Review of proceedings.—If any punishment awarded under any of the sections 83, 84 and 85 appears to a superior military authority as defined in section 88 to be illegal, unjust or excessive, such authority may cancel, vary or remit the punishment and make such other direction as may be appropriate in the circumstances of the case.

88. Superior military authority.—For the purpose of sections 86 and 87, a 'superior military authority' means—

(a) in the case of punishments awarded by a commanding officer, any officer superior in command to such commanding officer;

(b) in the case of punishments awarded by any other authority, the Central Government, the Commander-in-Chief or other officer specified by the Commander-in-Chief.

89. Collective fines.—(1) Whenever any weapon or part of a weapon forming part of the equipment of a half squadron, battery, company or other similar unit is lost or stolen, the officer commanding the army, army corps, division or independent brigade to which such unit belongs may, after obtaining the report of a court of inquiry, impose a collective fine upon the junior commissioned officers, warrant officers, non-commissioned officers and men of such unit, or upon so many of them as, in his judgment, should be held responsible for such loss or theft.

(2) Such fine shall be assessed as a percentage on the pay of the individuals on whom it falls.

CHAPTER VII

PENAL DEDUCTIONS

90. Deductions from pay and allowances of officers.—The following penal deductions may be made from the pay and allowances of an officer, that is to say,—

(a) all pay and allowances due to an officer for every day he absents himself without leave, unless a satisfactory explanation has been given to his commanding officer and has been approved by the Central Government;

(b) all pay and allowances for every day while he is in custody or under suspension from duty on a charge for an offence for which he is afterwards convicted by a Criminal Court or a court-martial or by an officer exercising authority under section 83 or section 84;

(c) any sum required to make good the pay of any person subject to this Act which he has unlawfully retained or unlawfully refused to pay;

(d) any sum required to make good such compensation for any expenses, loss, damage or destruction occasioned by the commission of an offence as may be determined by the court-martial by whom he is convicted of such offence, or by an officer exercising authority under section 83 or section 84;

(e) all pay and allowances ordered by a court-martial or an officer exercising authority under section 85 to be forfeited or stopped;

(f) any sum required to pay a fine awarded by a criminal court or a court-martial exercising jurisdiction under section 69;

(g) any sum required to make good any loss, damage, or destruction of public or regimental property which, after due investigation, appears to the Central Government to have been occasioned by the wrongful act or negligence on the part of the officer;

(h) all pay and allowances forfeited by order of the Central Government if the officer is found by a court of inquiry constituted by the Commander-in-Chief in this behalf, to have deserted to the enemy, or while in enemy hands, to have served with, or under the orders of, the enemy, or in any manner to have aided the enemy, or to have allowed himself to be taken prisoner by the enemy through want of due precaution or through disobedience of orders or wilful neglect of duty, or having been taken prisoner by the enemy, to have failed to rejoin his service when it was possible to do so;

(i) any sum required by order of the Central Government to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

91. Deductions from pay and allowances of persons other than officers.—Subject to the provisions of section 94 the following penal deductions may be made from the pay and allowances of a person subject to this Act other than an officer, that is to say,—

(a) all pay and allowances for every day of absence either on desertion or without leave, or as a prisoner of war, and for every day of transportation or imprisonment awarded by a criminal court, a court-martial or an officer exercising authority under section 80, or of field punishment awarded by a court-martial or such officer;

(b) all pay and allowances for every day while he is in custody on a charge for an offence of which he is afterwards convicted by a criminal Court or a court-martial, or on a charge of absence without leave for which he is afterwards awarded imprisonment or field punishment by an officer exercising authority under section 80;

(c) all pay and allowances for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by an offence under this Act committed by him;

(d) for every day on which he is in hospital on account of sickness certified by the medical officer attending on him to have been caused by his own misconduct or imprudence, such sum as may be specified by order of the Central Government or such officer as may be specified by that Government;

(e) all pay and allowances ordered by a court-martial or by an officer exercising authority under any of the sections 80, 83, 84 and 85, to be forfeited or stopped;

(f) all pay and allowances for every day between his being recovered from the enemy and his dismissal from the service in consequence of his conduct when being taken prisoner by, or while in the hands of, the enemy;

(g) any sum required to make good such compensation for any expenses, loss, damage or destruction caused by him to the Central Government or to any building or property as may be awarded by his commanding officer;

(h) any sum required to pay a fine awarded by a criminal court, a court-martial exercising jurisdiction under section 69, or an officer exercising authority under any of the sections 80 and 80;

(i) any sum required by order of the Central Government or any prescribed officer to be paid for the maintenance of his wife or his legitimate or illegitimate child or towards the cost of any relief given by the said Government to the said wife or child.

92. Computation of time of absence or custody.—For the purposes of clauses (a) and (b) of section 91,—

(a) no person shall be treated as absent or in custody for a day unless the absence or custody has lasted, whether wholly in one day, or partly in one day and partly in another, for six consecutive hours or upwards;

(b) any absence or custody for less than a day may be reckoned as absence or custody for a day if such absence or custody prevented the absentee from fulfilling any military duty which was thereby thrown upon some other person;

(c) absence or custody for twelve consecutive hours or upwards may be reckoned as absence or custody for the whole of each day during any portion of which the person was absent or in custody;

(d) a period of absence, or imprisonment, which commences before, and ends after, midnight may be reckoned as a day.

93. Pay and allowances during trial.—In the case of any person subject to this Act who is in custody or under suspension from duty on a charge for an offence, the prescribed officer may direct that the whole or any part of the pay and allowances of such person shall be withheld, pending the result of his trial on the charge against him, in order to give effect to the provisions of clause (b) of sections 90 and 91.

94. Limit of certain deductions.—The total deductions from the pay and allowances of a person made under clauses (e), (g) to (i) of section 91 shall not, except where he is sentenced to dismissal, exceed in any one month one-half of his pay and allowances for that month.

95. Deduction from public money due to a person.—Any sum authorised by this Act to be deducted from the pay and allowances of any person may, without prejudice to any other mode of recovering the same, be deducted from any public money due to him other than a pension.

96. Pay and allowances of prisoner of war during inquiry into his conduct.—Where the conduct of any person subject to this Act when being taken prisoner by, or while in the hands of, the enemy, is to be inquired into under this Act or any other law, the Commander-in-Chief or any officer authorised by him may order that the whole or any part of the pay and allowances of such person shall be withheld pending the result of such inquiry.

97. Remission of deductions.—Any deduction from pay and allowances authorised by this Act may be remitted in such manner and to such extent, and by such authority, as may from time to time be prescribed.

98. Provision for dependants of prisoner of war from remitted deductions.—In the case of all persons subject to this Act, being prisoners of war, whose pay and allowances have been forfeited under clause (h) of section 90 or clause (a) of section 91, but in respect of whom a remission has been made under section 97, it shall be lawful for proper provision to be made by the prescribed authorities out of such pay and allowances for any dependants of such persons, and any such remission shall in that case be deemed to apply only to the balance thereafter remaining of such pay and allowances.

99. Provision for dependants of prisoner of war from his pay and allowances.—It shall be lawful for proper provision to be made by the prescribed authorities for any dependants of any person subject to this Act who is a prisoner of war or is missing, out of his pay and allowances.

100. Period during which a person is deemed to be a prisoner of war.—For the purposes of sections 98 and 99, a person shall be deemed to continue to be a prisoner of war until the conclusion of any inquiry into his conduct such as is referred to in section 96, and if he is cashiered or dismissed from the service in consequence of such conduct, until the date of such cashiering or dismissal.

CHAPTER IX

ARREST AND PROCEEDINGS BEFORE TRIAL

101. Custody of offenders.—(1) Any person subject to this Act who is charged with an offence may be taken into military custody.

(2) Any such person may be ordered into military custody by any superior officer.

(3) An officer may order into military custody any officer, though he may be of a higher rank, engaged in a quarrel, affray or disorder.

102. Duty of commanding officer in regard to detention.—(1) It shall be the duty of every commanding officer to take care that a person under his command when charged with an offence is not detained in custody for more than forty-eight hours after the committal of such person into custody is reported to him, without the charge being investigated, unless investigation within that period seems to him to be impracticable having regard to the public service.

(2) The case of every person being detained in custody beyond a period of forty-eight hours, and the reason thereof, shall be reported by the commanding officer to the general or other officer to whom application would be made to convene a general or district court-martial for the trial of the person charged.

(3) In reckoning the period of forty-eight hours specified in sub-section (1), Sundays and other public holidays shall be excluded.

(4) Subject to the provisions of this Act, the Central Government may make rules providing for the manner in which and the period for which any person subject to this Act may be taken into and detained in military custody, pending the trial by any competent authority for any offence committed by him.

103. Interval between committal and court-martial.—In every case where any such person as is mentioned in section 101 and as is not on active service remains in such custody for a longer period than eight days, without a court-martial for his trial being ordered to assemble, a special report giving reasons for the delay shall be made by his commanding officer in the manner prescribed, and a similar report shall be forwarded at intervals of every eight days until a court-martial is assembled or such person is released from custody.

104. Arrest by civil authorities.—Whenever any person subject to this Act, who is accused of any offence under this Act, is within the jurisdiction of any magistrate or police officer, such magistrate or police officer shall aid in the apprehension and delivery to military custody of such person upon receipt of a written application to that effect signed by his commanding officer.

105. Capture of deserters.—(1) Whenever any person subject to this Act deserts, the commanding officer of the corps, department or detachment to which he belongs, shall give written information of the desertion to such civil authorities as, in his opinion, may be able to afford assistance towards the capture of

the deserter; and such authorities shall thereupon take steps for the apprehension of the said deserter in like manner as if he were a person for whose apprehension a warrant had been issued by a magistrate, and shall deliver the deserter, when apprehended, into military custody.

(2) Any police officer may arrest without warrant any person reasonably believed to be subject to this Act, and to be a deserter or to be travelling without authority, and shall bring him without delay before the nearest magistrate, to be dealt with according to law.

108. Inquiry into absence without leave.—(1) When any person subject to this Act has been absent from his duty without due authority for a period of thirty days, a court of inquiry shall, as soon as practicable, be assembled, and such court shall, on oath or affirmation administered in the prescribed manner, inquire respecting the absence of the person, and the deficiency, if any, in the property of the Government entrusted to his care, or in any arms, ammunition, equipment, instruments, clothing or necessaries; and if satisfied of the fact of such absence without due authority or other sufficient cause, the court shall declare such absence and the period thereof, and the said deficiency, if any, and the commanding officer of the corps or department to which the person belongs shall enter in the court-martial book of the corps or department a record of the declaration.

(2) If the person declared absent does not afterwards surrender or is not apprehended, he shall, for the purposes of this Act, be deemed to be a deserter.

107. Provost-marshals.—(1) Provost-marshals may be appointed by the Commander-in-Chief or by any prescribed officer.

(2) The duties of a provost-marshall are to take charge of persons confined for any offence, to preserve good order and discipline, and to prevent breaches of the same by persons serving in, or attached to, the regular Army.

(3) A provost-marshall may at any time arrest and detain for trial any person subject to this Act who commits, or is charged with, an offence, and may also carry into effect any punishment to be inflicted in pursuance of the sentence awarded by a court-martial, or by an officer exercising authority under section 80 but shall not inflict any punishment on his own authority:

Provided that no officer shall be so arrested or detained otherwise than on the order of another officer.

(4) For the purposes of sub-sections (2) and (3), a provost-marshall shall be deemed to include a provost-marshall appointed under any law for the time being in force relating to the government of the Navy or Air Force, and any person legally exercising authority under him or on his behalf.

CHAPTER X

COURTS-MARTIAL

108. Kinds of courts-martial.—For the purposes of this Act there shall be four kinds of courts-martial, that is to say,—

- (a) general courts-martial;
- (b) district courts-martial;
- (c) summary general courts-martial; and
- (d) summary courts-martial.

109. Power to convene a general court-martial.—A general court-martial may be convened by the Central Government or the Commander-in-Chief or by any officer empowered in this behalf by warrant of the Commander-in-Chief.

110. Power to convene a district court-martial.—A district court-martial may be convened by an officer having power to convene a general court-martial or by any officer empowered in this behalf by warrant of any such officer.

111. Contents of warrants issued under sections 109 and 110.—A warrant issued under section 109 or section 110 may contain such restrictions, reservations or conditions as the officer issuing it may think fit.

112. Power to convene a summary general court-martial.—The following authorities shall have power to convene a summary general court-martial, namely,—

(a) an officer empowered in this behalf by an order of the Central Government or of the Commander-in-Chief;

(b) on active service, the officer commanding the forces in the field, or any officer empowered by him in this behalf;

(c) an officer commanding any detached portion of the regular Army on active service when, in his opinion, it is not practicable, with due regard to discipline and the exigencies of the service, that an offence should be tried by a general court-martial.

113. Composition of general court-martial.—A general court-martial shall consist of not less than five officers, each of whom has held a commission for not less than three whole years and of whom not less than four are of a rank not below that of captain.

114. Composition of district court-martial.—A district court-martial shall consist of not less than three officers, each of whom has held a commission for not less than two whole years.

115. Composition of summary general court-martial.—A summary general court-martial shall consist of not less than three officers.

116. Summary court-martial.—(1) A summary court-martial may be held by the commanding officer of any corps, department or detachment of the regular Army, and he shall alone constitute the court.

(2) The proceedings shall be attended throughout by two other persons who shall be officers or junior commissioned officers or one of either, and who shall not as such, be sworn or affirmed.

117. Dissolution of courts-martial.—(1) If a court-martial after the commencement of a trial is reduced below the minimum number of officers required by this Act, it shall be dissolved.

(2) If, on account of the illness of the judge advocate or of the accused before the finding, it is impossible to continue the trial, a court-martial shall be dissolved.

(3) The officer who convened a court-martial may dissolve such court-martial if it appears to him that military exigencies or the necessities of discipline render it impossible or inexpedient to continue the said court-martial.

(4) Where a court-martial is dissolved under this section, the accused may be tried again.

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118. Powers of general and summary general courts-martial.—A general or summary general court-martial shall have power to try any person subject to this Act for any offence punishable therein and to pass any sentence authorised thereby.

119. Powers of district courts-martial.—A district court-martial shall have power to try any person subject to this Act other than an officer or a junior commissioned officer for any offence made punishable therein, and to pass any sentence authorised by this Act other than a sentence of death, transportation, or imprisonment for a term exceeding two years:

Provided that a district court-martial shall not sentence a warrant officer to imprisonment.

120. Powers of summary courts-martial.—(1) Subject to the provisions of sub-section (2), a summary court-martial may try any offence punishable under this Act.

(2) When there is no grave reason for immediate action and reference can without detriment to discipline be made to the officer empowered to convene a district court-martial or on active service a summary general court-martial for the trial of the alleged offender, an officer holding a summary court-martial shall not try without such reference any offence punishable under any of the sections 84, 87 and 89, or any offence against the officer holding the court.

(3) A summary court-martial may try any person subject to this Act and under the command of the officer holding the court, except an officer, junior commissioned officer or warrant officer.

(4) A summary court-martial may pass any sentence which may be passed under this Act, except a sentence of death or transportation, or of imprisonment for a term exceeding the limit specified in sub-section (5).

(5) The limit referred to in sub-section (4) shall be one year if the officer holding the summary court-martial is of the rank of lieutenant-colonel and upwards, and three months if such officer is below that rank.

121. Prohibition of second trial.—When any person subject to this Act has been acquitted or convicted of an offence by a court-martial or by a criminal court, or has been dealt with under any of the sections 80, 83, 84 and 85, he shall not be liable to be tried again for the same offence by a court-martial or dealt with under the said sections.

122. Period of limitation for trial.—(1) Except as provided by sub-section (2), no trial by court-martial of any person subject to this Act for any offence shall be commenced after the expiration of a period of three years from the date of such offence.

(2) The provisions of sub-section (1) shall not apply to a trial for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 87.

(3) In the computation of the period of time mentioned in sub-section (1), any time spent by such person as a prisoner of war, or in enemy territory, or in evading arrest after the commission of the offence, shall be excluded.

(4) No trial for an offence of desertion other than desertion on active service or of fraudulent enrolment shall be commenced if the person in question, not being an officer, has subsequently to the commission of the offence, served continuously in an exemplary manner for not less than three years with any portion of the regular Army.

123. Liability of offender who ceases to be subject to Act.—(1) Where an offence under this Act had been committed by any person while subject to this Act, and he has ceased to be so subject, he may be taken into and kept in military custody, and tried and punished for such offence as if he continued to be so subject.

(2) No such person shall be tried for an offence, unless his trial commences within six months after he had ceased to be subject to this Act:

Provided that nothing contained in this sub-section shall apply to the trial of any such person for an offence of desertion or fraudulent enrolment or for any of the offences mentioned in section 37 or shall affect the jurisdiction of a criminal court to try any offence triable by such court as well as by a court-martial.

(3) When a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, this Act shall apply to him during the term of his sentence, though he is cashiered or dismissed from the regular Army, or has otherwise ceased to be subject to this Act, and he may be kept, removed, imprisoned and punished as if he continued to be subject to this Act.

(4) When a person subject to this Act is sentenced by a court-martial to death, this Act shall apply to him till the sentence is carried out.

124. Place of trial.—Any person subject to this Act who commits any offence against it may be tried and punished for such offence in any place whatever.

125. Choice between criminal court and court-martial.—When a criminal court and a court-martial have each jurisdiction in respect of an offence, it shall be in the discretion of the officer commanding the army, army corps, division or independent brigade in which the accused person is serving or such other officer as may be prescribed to decide before which court the proceedings shall be instituted, and, if that officer decides that they should be instituted before a court-martial, to direct that the accused person shall be detained in military custody.

126. Power of criminal court to require delivery of offender.—(1) When a criminal court having jurisdiction is of opinion that proceedings shall be instituted before itself in respect of any alleged offence, it may, by written notice, require the officer referred to in section 125 at his option, either to deliver over the offender to the nearest magistrate to be proceeded against according to law, or to postpone proceedings pending a reference to the Central Government.

(2) In every such case the said officer shall either deliver over the offender in compliance with the requisition, or shall forthwith refer the question as to the court before which the proceedings are to be instituted for the determination of the Central Government, whose order upon such reference shall be final.

127. Successive trials by a criminal court and court-martial.—(1) A person convicted or acquitted by a court-martial may, with the previous sanction of the Central Government, be tried again by a criminal court for the same offence, or on the same facts.

(2) If a person sentenced by a court-martial under this Act or punished under any of the sections 80, 88, 84 or 85 is afterwards tried and convicted by a criminal court for the same offence, or on the same facts, that court shall, in awarding punishment, have regard to the punishment he may already have undergone for the said offence.

CHAPTER XI

PROCEDURE OF COURTS-MARTIAL

128. Presiding officer.—At every general, district or summary general court-martial the senior member shall be the presiding officer.

129. Judge Advocate.—Every general court-martial shall, and every district or summary general court-martial may, be attended by a judge advocate, who shall be either an officer belonging to the department of the Judge Advocate General, or if no such officer is available, an officer approved of by the Judge Advocate General or any of his deputies.

130. Challenges.—(1) At all trials by general, district or summary general court-martial, as soon as the court is assembled, the names of the presiding officer and members shall be read over to the accused, who shall thereupon be asked whether he objects to being tried by any officer sitting on the court.

(2) If the accused objects to any such officer, his objection, and also the reply thereto of the officer objected to, shall be heard and recorded, and the remaining officers of the court shall, in the absence of the challenged officer decide on the objection.

(3) If the objection is allowed by one-half or more of the votes of the officers entitled to vote, the objection shall be allowed, and the member objected to shall retire, and his vacancy may be filled in the prescribed manner by another officer, subject to the same right of the accused to object.

(4) When no challenge is made, or when challenge has been made and disallowed, or the place of every officer successfully challenged has been filled by another officer to whom no objection is made or allowed, the court shall proceed with the trial.

131. Oaths of member, judge advocate and witness.—(1) An oath or affirmation in the prescribed manner shall be administered to every member of every court-martial and to the judge advocate before the commencement of the trial.

(2) Every person giving evidence before a court-martial shall be examined after being duly sworn or affirmed in the prescribed form.

(3) The provisions of sub-section (2) shall not apply where the witness is a child under twelve years of age and the court-martial is of opinion that though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation.

132. Voting by members.—(1) Subject to the provisions of sub-sections (2) and (3), every decision of a court-martial shall be passed by an absolute majority of votes; and where there is an equality of votes on either the finding or the sentence, the decision shall be in favour of the accused.

(2) No sentence of death shall be passed by a general court-martial without the concurrence of at least two-thirds of the members of the court.

(3) No sentence of death shall be passed by a summary general court-martial without the concurrence of all the members.

(4) In matters, other than a challenge or the finding or sentence, the presiding officer shall have a casting vote.

133. General rule as to evidence.—The Indian Evidence Act, 1872 (I of 1872), shall, subject to the provisions of this Act, apply to all proceedings before a court-martial.

134. Judicial notice.—A court-martial may take judicial notice of any matter within the general military knowledge of the members.

135. Summoning witnesses.—(1) The convening officer, the presiding officer of a court-martial, the judge advocate or the commanding officer of the accused person may, by summons under his hand, require the attendance, at a time and place to be mentioned in the summons, of any person either to give evidence or to produce any document or other thing.

(2) In the case of a witness amenable to military authority, the summons shall be sent to his commanding officer, and such officer shall serve it upon him accordingly.

(3) In the case of any other witness, the summons shall be sent to the magistrate within whose jurisdiction he may be or reside, and such magistrate shall give effect to the summons as if the witness were required in the court of such magistrate.

(4) When a witness is required to produce any particular document or other thing in his possession or power, the summons shall describe it with reasonable precision.

136. Documents exempted from production.—(1) Nothing in section 135 shall be deemed to affect the operation of sections 123 and 124 of the Indian Evidence Act, 1872 (I of 1872), or to apply to any letter, postcard, telegram or other document in the custody of the postal or telegraph authorities.

(2) If any document in such custody is, in the opinion of any district magistrate, chief presidency magistrate, High Court or Court of Session, wanted for the purpose of any court-martial, such magistrate or Court may require the postal or telegraph authorities, as the case may be, to deliver such document to such person as such magistrate or Court may direct.

(3) If any such document is, in the opinion of any other magistrate or of any commissioner of police or district superintendent of police, wanted for any such purpose, he may require the postal or telegraph authorities, as the case may be, to cause search to be made for and to detain such document pending the orders of any such district magistrate, chief presidency magistrate or High Court or Court of Session.

137. Commissions for examination of witnesses.—(1) Whenever, in the course of a trial by court-martial, it appears to the court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, in the circumstances of the case, would be unreasonable, such court may address the Judge Advocate General in order that a commission to take the evidence of such witness may be issued.

(2) The Judge Advocate General may then, if he thinks necessary, issue a commission to any district magistrate or magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

(3) The magistrate or officer to whom the commission is issued, or, if he is the district magistrate, he or such magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in a Part B State.

(4) When the witness resides in a tribal area or in any place outside India, the commission may be issued in the manner specified in Chapter XL of the Code of Criminal Procedure, 1898 (Act V of 1898), or of any corresponding law in force in a Part B State.

(5) In this and the next succeeding section, the expression "Judge Advocate General" includes a Deputy Judge Advocate General.

138. Examination of a witness on commission.—(1) The prosecutor and the accused person in any case in which a commission is issued under section 187 may respectively forward any interrogatories in writing which the court may think relevant to the issue, and the magistrate or officer executing the commission shall examine the witness upon such interrogatories.

(2) The prosecutor and the accused person may appear before such magistrate or officer by counsel or, except in the case of an accused person in custody, in person, and may examine, cross-examine and re-examine, as the case may be, the said witness.

(3) After a commission issued under section 187 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Judge Advocate General.

(4) On receipt of a commission and deposition returned under sub-section (3), the Judge Advocate General shall forward the same to the court at whose instance the commission was issued or, if such court has been dissolved, to any other court convened for the trial of the accused person; and the commission, the return thereeto and the deposition shall be open to inspection by the prosecutor and the accused person, and may, subject to all just exceptions, be read in evidence in the case by either the prosecutor or the accused, and shall form part of the proceedings of the court.

(5) In every case in which a commission is issued under section 187, the trial may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

139. Conviction of offence not charged.—(1) A person charged before a court-martial with desertion may be found guilty of attempting to desert or of being absent without leave.

(2) A person charged before a court-martial with attempting to desert may be found guilty of being absent without leave.

(3) A person charged before a court-martial with using criminal force may be found guilty of assault.

(4) A person charged before a court martial with using threatening language may be found guilty of using insubordinate language.

(5) A person charged before a court-martial with any one of the offences specified in clauses (a), (b), (c) and (d) of section 52 may be found guilty of any other of these offences with which he might have been charged.

(6) A person charged before a court-martial with an offence punishable under section 69 may be found guilty of any other offence of which he might have been found guilty if the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), were applicable.

(7) A person charged before a court-martial with any offence under this Act, may, on failure of proof of an offence having been committed in circumstances involving a more severe punishment, be found guilty of the same offence as having been committed in circumstances involving a less severe punishment.

(8) A person charged before a court-martial with any offence under this Act may be found guilty of having attempted or abetted the commission of that offence, although the attempt or abetment is not separately charged.

140. Presumption as to signatures.—In any proceeding under this Act, any application, certificate, warrant, reply or other document purporting to be signed by an officer in the service of the Government shall, on production, be presumed to have been duly signed by the person by whom and in the character in which it purports to have been signed, until the contrary is shown.

141. Enrolment paper.—(1) Any enrolment paper purporting to be signed by an enrolling officer shall, in proceedings under this Act, be evidence of the person enrolled having given the answers to questions which he is therein represented as having given.

(2) The enrolment of such person may be proved by the production of the original or a copy of his enrolment paper purporting to be certified to be a true copy by the officer having the custody of the enrolment paper.

142. Presumption as to certain documents.—(1) A letter, return or other document respecting the service of any person in, or the cashiering, dismissal or discharge of any person from, any portion of the regular Army, or respecting the circumstance of any person not having served in, or belonged to, any portion of the Forces, if purporting to be signed by or on behalf of the Central Government or the Commander-in-Chief, or by any prescribed officer, shall be evidence of the facts stated in such letter, return or other document.

(2) An Army, Navy or Air Force List or Gazette purporting to be published by authority shall be evidence of the status and rank of the officers, junior commissioned officers or warrant officers therein mentioned, and of any appointment held by them and of the corps, battalion or arm or branch of the services to which they belong.

(3) Where a record is made in any regimental book in pursuance of this Act or of any rules made thereunder or otherwise in pursuance of military duty, and purports to be signed by the commanding officer or by the officer whose duty it is to make such record, such record shall be evidence of the facts therein stated.

(4) A copy of any record in any regimental book purporting to be certified to be a true copy by the officer having custody of such book shall be evidence of such record.

(5) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of any officer or other person subject to this Act, or any portion of the regular Army, or has been apprehended by such officer or person, a certificate purporting to be signed by such officer, or by the commanding officer of that portion of the regular Army, or by the commanding officer of the corps, department or detachment to which such person belongs, as the case may be, and stating the fact, date and place of such surrender or apprehension, and the manner in which he was dressed, shall be evidence of the matters so stated.

(6) Where any person subject to this Act is being tried on a charge of desertion or of absence without leave, and such person has surrendered himself into the custody of, or has been apprehended by, a police officer not below the rank of an officer in charge of a police station, a certificate purporting to be signed by such police officer and stating the fact, date and place of such surrender or apprehension and the manner in which he was dressed shall be evidence of the matters so stated.

(7) Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government upon any matter or thing duly submitted to him for examination or analysis and report may be used as evidence in any proceeding under this Act.

143. Reference by accused to Government officer.—(1) If at any trial for absence without leave, overstaying leave or not rejoining when warned for service, the person tried states in his defence any sufficient or reasonable excuse for his unauthorised absence, and refers in support thereof to any officer in the service of the Government, or if it appears that any such officer is likely to prove or disprove the said statement in the defence, the court shall address such officer and adjourn the proceedings until his reply is received.

(2) The written reply of any officer so referred to shall, if signed by him be received in evidence and have the same effect as if made on oath before the court.

(3) If the court is dissolved before the receipt of such reply, or if the court fails to comply with the provisions of this section, the convening officer may, at his discretion annul the proceedings and order a fresh trial.

144. Evidence of previous convictions and general character.—(1) When any person subject to this Act has been convicted by a court-martial of any offence, the court-martial may inquire into, and receive and record evidence of any previous convictions of such person, either by a court-martial or by a criminal court, or any previous award of punishment under any of the sections 80, 83, and 85, and may further inquire into and record the general character of such person and such other matters as may be prescribed.

(2) Evidence received under this section may be either oral, or in the shape of entries in, or certified extracts from, court-martial books or other official records; and it shall not be necessary to give notice before trial to the person tried that evidence as to his previous convictions or character will be received.

(3) At a summary court-martial the officer holding the trial may, if he thinks fit, record any previous convictions against the offender, his general character, and such other matters as may be prescribed, as of his own knowledge, instead of requiring them to be proved under the foregoing provisions of this section.

145. Lunacy of accused.—(1) Whenever, in the course of a trial by a court-martial, it appears to the court that the person charged is by reason of unsoundness of mind incapable of making his defence, or that he committed the act alleged but was by reason of unsoundness of mind incapable of knowing the nature of the act or knowing that it was wrong or contrary to law, the court shall record a finding accordingly.

(2) The presiding officer of the court, or, in the case of a summary court-martial, the officer holding the trial, shall forthwith report the case to the confirming officer, or to the authority empowered to deal with its finding under section 162, as the case may be.

(3) The confirming officer to whom the case is reported under sub-section (2) may, if he does not confirm the finding, take steps to have the accused person tried by the same or another court-martial for the offence with which he was charged.

(4) The authority to whom the finding of a summary court-martial is reported under sub-section (2), and a confirming officer confirming a finding in any case reported to him shall order the accused person to be kept in custody in the

prescribed manner and shall report the case for the orders of the Central Government.

(5) On receipt of a report under sub-section (4) the Central Government may order the accused person to be detained in a lunatic asylum or other suitable place of safe custody.

148. Subsequent fitness of lunatic accused for trial.—Where any accused person, having been found by reason of unsoundness of mind to be incapable of making his defence, is in custody or under detention under section 145, the officer commanding the army, army corps, division or brigade within the area of whose command the accused is in custody or is detained, or any other officer prescribed in this behalf, may—

(a) if such person is in custody under sub-section (1) of section 145, on the report of a medical officer that he is capable of making his defence, or

(b) if such person is detained in a jail under sub-section (5) of section 145, on a certificate of the Inspector General of Prisons, and if such person is detained in a lunatic asylum under the said sub-section on a certificate of any two or more of the visitors of such asylum that he is capable of making his defence,

take steps to have such person tried by the same or another court-martial for the offence with which he was originally charged or, if the offence is a civil offence, by a criminal court.

147. Transmission to Central Government of orders under section 148.—A copy of every order made by an officer under section 148 for the trial of the accused shall forthwith be sent to the Central Government.

148. Release of lunatic accused.—Where any person is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of this section—

(a) if such person is in custody under the said sub-section (4), on the report of a medical officer, or

(b) if such person is detained under the said sub-section (5), on a certificate from any of the authorities mentioned in clause (b) of section 1 that, in the judgment of such officer or authority such person may be released without danger of his doing injury to himself or to any other person

the Central Government may order that such person be released or detained in custody, or transferred to a public lunatic asylum if he has not already been sent to such an asylum.

149. Delivery of lunatic accused to relatives.—Where any relative or friend of any person who is in custody under sub-section (4) of section 145 or under detention under sub-section (5) of this section desires that he should be delivered to his care and custody, the Central Government may upon application by such relative or friend and on his giving security to the satisfaction of that Government that the person delivered shall be properly taken care of and prevented from doing injury to himself or any other person, and be produced for the inspection of such officer, and at such times and places, as the Central Government may direct, order such person to be delivered to such relative or friend.

150. Order for custody and disposal of property pending trial.—When property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence, is produced before a court-martial during a trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the trial,

if the property is subject to speedy or natural decay may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

151. Order for disposal of property regarding which offence is committed.—(1) After the conclusion of a trial before any court-martial, the court or the officer confirming the finding or sentence of such court-martial, or any authority superior to such officer, or, in the case of a court-martial whose finding or sentence does not require confirmation, the officer commanding the army, army corps, division or brigade within which the trial was held, may make such order as it or he thinks fit for the disposal by destruction, confiscation, delivery to any person claiming to be entitled to possession thereof, or otherwise, of any property or document produced before the court or in its custody, or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) Where any order has been made under sub-section (1) in respect of property regarding which an offence appears to have been committed, a copy of such order signed and certified by the authority making the same may, whether the trial was held within India or not, be sent to a magistrate within whose jurisdiction such property for the time being is situated, and such magistrate shall thereupon cause the order to be carried into effect as if it were an order passed by him under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in a Part B State.

(3) In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any person, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange whether immediately or otherwise.

152. Powers of court-martial in relation to proceedings under this Act.—Any trial by a court-martial under the provisions of this Act shall be deemed to be a judicial proceeding within the meaning of sections 198 and 228 of the Indian Penal Code (Act XLV of 1860), and the court-martial shall be deemed to be a court within the meaning of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).

CHAPTER XII

CONFIRMATION AND REVISION

153. Finding and sentence not valid, unless confirmed.—No finding or sentence of a general, district or summary general, court-martial shall be valid except so far as it may be confirmed as provided by this Act.

154. Power to confirm finding and sentence of general court-martial.—The findings and sentences of general courts-martial may be confirmed by the Central Government, or by any officer empowered in this behalf by warrant of the Central Government.

155. Power to confirm finding and sentence of district court-martial.—The findings and sentences of district courts-martial may be confirmed by any officer having power to convene a general court-martial or by any officer empowered in his behalf by warrant of such officer.

156. Limitation of powers of confirming authority.—A warrant issued under section 154 or section 155 may contain such restrictions, reservations or conditions as the authority issuing it may think fit.

157. Power to confirm finding and sentence of summary general court-martial.—The findings and sentences of summary general courts-martial may be confirmed by the convening officer or if he so directs, by an authority superior to him.

158. Power of confirming authority to mitigate, remit or commute sentences.—(1) Subject to such restrictions, reservations or conditions as may be contained in any warrant issued under section 154 or section 155 and to the provision of sub-section (2), a confirming authority may, when confirming the sentence of a court-martial, mitigate or remit the punishment thereby awarded, or commute that punishment for any punishment or punishments lower in the scale laid down in section 71.

(2) A sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court.

159. Confirming of findings and sentences on board a ship.—When any person subject to this Act is tried and sentenced by a court-martial while on board a ship, the finding and sentence so far as not confirmed and executed on board the ship, may be confirmed and executed in like manner as if such person had been tried at the port of disembarkation.

160. Revision of finding or sentence.—(1) Any finding or sentence of a court-martial which requires confirmation may be once revised by order of the confirming authority and on such revision, the court, if so directed by the confirming authority, may take additional evidence.

(2) The court, on revision, shall consist of the same officers as were present when the original decision was passed, unless any of those officers are unavoidably absent.

(3) In case of such unavoidable absence the cause thereof shall be duly certified in the proceedings, and the court shall proceed with the revision, provided that, if a general court martial, it still consists of five officers, or, if a summary general or district court-martial, of three officers.

161. Finding and sentence of a summary court-martial.—(1) Save as otherwise provided in sub-section (2), the finding and sentence of a summary court-martial shall not require to be confirmed, but may be carried out forthwith.

(2) If the officer holding the trial is of less than five years service, he shall not, except on active service, carry into effect any sentence until it has received the approval of an officer commanding not less than a brigade.

162. Transmission of proceedings of summary courts-martial.—The proceedings of every summary court-martial shall without delay be forwarded to the officer commanding the division or brigade within which the trial was held or to the prescribed officer; and such officer, or the Commander-in-Chief, or any officer empowered in this behalf by the Commander-in-Chief, may, for reasons based on the merits of the case but not any merely technical grounds, set aside the proceedings or reduce the sentence to any other sentence which the court might have passed.

163. Alteration of finding or sentence in certain cases.—(1) Where a finding of guilty by a court-martial, which has been confirmed, or which does not require confirmation, is found for any reason to be invalid or cannot be supported by the evidence, the authority which would have had power under section

179 to commute the punishment awarded by the sentence, if the finding had been valid, may substitute a new finding and pass a sentence for the offence specified or involved in such finding:

Provided that no such substitution shall be made unless such finding could have been validly made by the court-martial on the charge and unless it appears that the court-martial must have been satisfied of the facts establishing the said offence.

(2) Where a sentence passed by a court-martial which has been confirmed, or which does not require confirmation, not being a sentence passed in pursuance of a new finding substituted under sub-section (1), is found for any reason to be invalid, the authority referred to in sub-section (1) may pass a valid sentence.

(3) The punishment awarded by a sentence passed under sub-section (1) or sub-section (2) shall not be higher in the scale of punishments than, or in excess of, the punishment awarded by the sentence for which a new sentence is substituted under this section.

(4) Any finding substituted, or any sentence passed, under this section shall, for the purposes of this Act and the rules made thereunder, have effect as if it were a finding or sentence, as the case may be, of a court-martial.

164. Remedy against order, finding or sentence of court-martial.—(1) Any person subject to this Act who considers himself aggrieved by any order passed by any court-martial may present a petition to the officer or authority empowered to confirm any finding or sentence of such court-martial, and the confirming authority may take such steps as may be considered necessary to satisfy itself as to the correctness, legality or propriety of the order passed or as to the regularity of any proceeding to which the order relates.

(2) Any person subject to this Act who considers himself aggrieved by a finding or sentence of any court-martial which has been confirmed, may present a petition to the Central Government, the Commander-in-Chief or any prescribed officer superior in command to the one who confirmed such finding or sentence, and the Central Government, the Commander-in-Chief or other officer, as the case may be, may pass such order thereon as it or he thinks fit.

165. Annulment of proceedings.—The Central Government, the Commander-in-Chief or any prescribed officer may annul the proceedings of any court-martial on the ground that they are illegal or unjust.

CHAPTER XIII

EXECUTION OF SENTENCES

166. Form of sentence of death.—In awarding a sentence of death a court-martial shall, in its discretion, direct that the offender shall suffer death by being hanged by the neck until he be dead, or shall suffer death by being shot to death.

167. Commencement of sentence of transportation or imprisonment.—Whenever any person is sentenced by a court-martial under this Act to transportation or imprisonment, the term of his sentence shall, whether it has been revised or not, be reckoned to commence on the day on which the original proceedings were signed by the presiding officer or, in the case of a summary court-martial, by the court.

168. Execution of sentence of transportation.—Whenever any sentence of transportation is passed under this Act or whenever any sentence of death is commuted to transportation, the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the civil prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

169. Execution of sentence of imprisonment.—(1) Whenever any sentence of imprisonment is passed under this Act by a court-martial or whenever any sentence of death or transportation is commuted to imprisonment, the confirming officer or in case of a summary court-martial the officer holding the court or such other officer as may be prescribed, shall, save as otherwise provided in sub-sections (3) and (4), direct either that the sentence shall be carried out by confinement in a military prison or that it shall be carried out by confinement in a civil prison.

(2) When a direction has been made under sub-section (1) the commanding officer of the person under sentence or such other officer as may be prescribed shall forward a warrant in the prescribed form to the officer in charge of the prison in which such person is to be confined and shall arrange for his despatch to such prison with the warrant.

(3) In the case of a sentence of imprisonment for a period not exceeding three months and passed under this Act by a court-martial, the appropriate officer under sub-section (1) may direct that the sentence shall be carried out by confinement in military custody instead of in a civil or military prison.

(4) On active service, a sentence of imprisonment may be carried out by confinement in such place as the officer commanding the forces in the field may from time to time appoint.

170. Temporary custody of offender.—Where a sentence of transportation or imprisonment is directed to be undergone in a civil prison the offender may be kept in a military prison or in military custody or in any other fit place, till such time as it is possible to send him to a civil prison.

171. Execution of sentence of imprisonment in special cases.—Whenever, in the opinion of an officer commanding an army, army corps, division or independent brigade, any sentence or portion of a sentence of imprisonment cannot for special reasons, conveniently be carried out in a military prison or in military custody in accordance with the provisions of section 160 such officer may direct that such sentence or portion of sentence shall be carried out by confinement in any civil prison or other fit place.

172. Conveyance of prisoner from place to place.—A person under sentence of transportation or imprisonment may during his conveyance from place to place, or when on board ship, aircraft, or otherwise, be subjected to such restraint as is necessary for his safe conduct and removal.

173. Communication of certain orders to prison officers.—Whenever an order is duly made under this Act setting aside or varying any sentence, order or warrant under which any person is confined in a civil or military prison, a warrant in accordance with such order shall be forwarded by the officer making the order or his staff officer or such other person as may be prescribed to the officer in charge of the prison in which such person is confined.

174. Execution of sentence of fine.—When a sentence of fine is imposed by a court-martial under section 69 whether the trial was held within India or not, a copy of such sentence, signed and certified by the confirming officer, or where no confirmation is required, by the officer holding the trial may be

sent to any magistrate in India, and such magistrate shall thereupon cause the fine to be recovered in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), or any corresponding law in force in a Part B State for the levy of fines as if it were a sentence of fine imposed by such magistrate.

175. Establishment and regulation of military prisons.—The Central Government may set apart any building or part of a building, or any place under its control, as a military prison for the confinement of persons sentenced to imprisonment under this Act.

176. Informality or error in the order or warrant.—Whenever any person is sentenced to transportation or imprisonment under this Act, and is undergoing the sentence in any place or manner in which he might be confined under a lawful order or warrant in pursuance of this Act, the confinement of such person shall not be deemed to be illegal only by reason of any informality or error in or as respects the order, warrant or other document, or the authority by which, or in pursuance whereof such person was brought into or is confined in any such place, and any such order, warrant or document may be amended accordingly.

177. Power to make rules in respect of prisons and prisoners.—The Central Government may make rules providing—

(a) for the government, management and regulation of military prisons;

(b) for the appointment, removal and powers of inspectors, visitors, governors and officers thereof;

(c) for the labour of prisoners undergoing confinement therein, and for enabling persons to earn, by special industry and good conduct, a remission of a portion of their sentence;

(d) for the safe custody of prisoners and the maintenance of discipline among them and the punishment, by personal correction, restraint or otherwise, of offences committed by prisoners;

(e) for the application to military prisons of any of the provisions of the Prisons Act, 1894 (IX of 1894), relating to the duties of officers of prisons and the punishment of persons not being prisoners;

(f) for the admission into any prison, at proper times and subject to proper restrictions, of persons with whom prisoners may desire to communicate, and for the consultation by prisoners under trial with their legal advisers without the presence as far as possible of any third party within hearing distance.

178. Restriction of rule-making power in regard to corporal punishment.—Rules made under section 177 shall not authorise corporal punishment to be inflicted for any offence, nor render the imprisonment more severe than it is under the law for the time being in force relating to civil prisons.

CHAPTER XIV

PARDONS, REMISSESS AND SUSPENSIONS

179. Pardon and remission.—When any person subject to this Act has been convicted by a court-martial of any offence, the Central Government or the Commander-in-Chief or, in the case of a sentence, which he could have

confirmed or which did not require confirmation, the officer commanding the army, army corps, division or independent brigade in which such person at the time of conviction was serving, or the prescribed officer may—

(a) either with or without conditions which the person sentenced accepts, pardon the person or remit the whole or any part of the punishment awarded; or

(b) mitigate the punishment awarded; or

(c) commute such punishment for any less punishment or punishments mentioned in this Act:

Provided that a sentence of transportation shall not be commuted for a sentence of imprisonment for a term exceeding the term of transportation awarded by the court; or

(d) either with or without conditions which the person sentenced accepts, release the person on parole.

180. Cancellation of conditional pardon, release on parole or remission.—

(1) If any condition on which a person has been pardoned or released on parole or a punishment has been remitted is, in the opinion of the authority which granted the pardon, release or remission, not fulfilled, such authority may cancel the pardon, release or remission, and thereupon the sentence of the court shall be carried into effect as if such pardon, release or remission had not been granted.

(2) A person whose sentence of transportation or imprisonment is carried into effect under the provisions of sub-section (1) shall undergo only the unexpired portion of his sentence.

181. Reduction of warrant officer or non-commissioned officer.—When under the provisions of section 77 a warrant officer or a non-commissioned officer is deemed to be reduced to the ranks, such reduction shall, for the purpose of section 179, be treated as a punishment awarded by a sentence of a court-martial.

182. Suspension of sentence of transportation or imprisonment.—(1) Where a person subject to this Act is sentenced by a court-martial to transportation or imprisonment, the Central Government, the Commander-in-Chief or any officer empowered to convene a general or a summary general court-martial may suspend the sentence whether or not the offender has already been committed to prison or to military custody.

(2) The authority or officer specified in sub-section (1) may in the case of an offender so sentenced direct that, until the orders of such authority or officer have been obtained the offender shall not be committed to prison or to military custody.

(3) The powers conferred by sub-sections (1) and (2) may be exercised in the case of any such sentence which has been confirmed, reduced or commuted.

183. Orders pending suspension.—(1) Where the sentence referred to in section 182 is imposed by a court-martial other than a summary court-martial, the confirming officer may, when confirming the sentence, direct that the offender be not committed to prison or to military custody until the orders of the authority or officer specified in section 182 have been obtained.

(2) Where a sentence of imprisonment is imposed by a summary court-martial, the officer holding the trial or the officer authorised to approve of the sentence under sub-section (2) of section 161 may make the direction referred to in sub-section (1).

184. Release on suspension.—Where a sentence is suspended under section 182, the offender shall forthwith be released from custody.

185. Computation of period of suspension.—Any period during which the sentence is under suspension shall be reckoned as part of the term of such sentence.

186. Order after suspension.—The authority or officer specified in section 182 may, at any time while a sentence is suspended, order—

- (a) that the offender be committed to undergo the unexpired portion of the sentence, or
- (b) that the sentence be remitted.

187. Reconsideration of case after suspension.—(1) Where a sentence has been suspended, the case may at any time, and shall at intervals of not more than four months, be reconsidered by the authority or officer specified in section 182, or by any general or other officer not below the rank of field officer duly authorised by the authority or officer specified in section 182.

(2) Where on such reconsideration by the officer so authorised it appears to him that the conduct of the offender since his conviction has been such as to justify a remission of the sentence he shall refer the matter to the authority or officer specified in section 182.

188. Fresh sentence after suspension.—Where an offender, while a sentence on him is suspended under this Act, is sentenced for any other offence, then—

- (a) if the further sentence is also suspended under this Act, the two sentences shall run concurrently;
- (b) if the further sentence is for a period of three months or more and is not suspended under this Act, the offender shall also be committed to prison or military custody for the unexpired portion of the previous sentence, but both sentences shall run concurrently; and
- (c) if the further sentence is for a period of less than three months and is not suspended under this Act, the offender shall be so committed on that sentence only, and the previous sentence shall, subject to any order which may be passed under section 186 or section 187, continue to be suspended.

189. Scope of power of suspension.—The powers conferred by sections 185 and 186 shall be in addition to and not in derogation of the power of mitigation, remission and commutation.

190. Effect of suspension and remission on dismissal.—(1) Where in addition to any other sentence the punishment of dismissal has been awarded by a court-martial, and such other sentence is suspended under section 182, then such dismissal shall not take effect until so ordered by the authority or officer specified in section 182.

(2) If such other sentence is remitted under section 186, the punishment of dismissal shall also be remitted.

CHAPTER XV

RULES

191. Power to make rules.—(1) The Central Government may make rule for the purpose of carrying into effect the provisions of this Act.

(2) Without prejudice to the generality of the power conferred by sub-section (1), the rules made thereunder may provide for—

- (a) the removal, retirement, release or discharge from the service of persons subject to this Act;

- (b) the amount and incidence of fines to be imposed under section 89;
- (c) the specification of the punishments which may be awarded as field punishments under sections 75 and 80;
- (d) the assembly and procedure of courts of inquiry, the recording of summaries of evidence and the administration of oaths or affirmations by such courts;
- (e) the convening and constituting of courts-martial and the appointment of prosecutors at trials by courts-martial;
- (f) the adjournment, dissolution and sitting of courts-martial;
- (g) the procedure to be observed in trials by courts-martial and the appearance of legal practitioners thereat;
- (h) the confirmation, revision and annulment of, and petitions against, the findings and sentences of courts-martial;
- (i) the carrying into effect of sentences of courts-martial;
- (j) the forms of orders to be made under the provisions of this Act relating to courts-martial, transportation and imprisonment;
- (k) the constitution of authorities to decide for what persons, to what amounts and in what manner, provision should be made for dependants under section 99, and the due carrying out of such decisions;
- (l) the relative rank of the officers, junior commissioned officers, warrant officers, petty officers and non-commissioned officers of the regular Army, Navy and Air Force when acting together;
- (m) any other matter directed by this Act to be prescribed.

192. Power to make regulations.—The Central Government may make regulations for all or any of the purposes of this Act other than those specified in section 191.

193. Publication of rules and regulations in Gazette.—All rules and regulations made under this Act shall be published in the Official Gazette and, on such publication, shall have effect as if enacted in this Act.

194. Repeals.—The Acts and Ordinances mentioned in the Schedule are hereby repealed.

CHAPTER XVI

TRANSITORY PROVISIONS

195. Definition of "British officer".—(1) In this Chapter "British officer" means a person of non-Indian domicile holding a commission in His Majesty's Land Forces or in the Royal Marines or in the Territorial Army and serving in the regular Army.

(2) The expression "superior officer" in this Act shall be deemed to include British officer.

196. Powers of British officer.—A British officer shall have all the powers conferred by this Act on an officer of corresponding rank or holding a corresponding appointment.

THE SCHEDULE

(See section 194)

Year	No.	Short title	Extent of repeal
1911	VIII	The Indian Army Act, 1911.	The whole, except Chapter XII.
1920	XX	The Indian Army (Suspension of Sentence) Act, 1920.	The whole.
1941	X	The Active Service Ordinance, 1941.	The whole.
1943	XXXVI	The Prisoners of War (Forfeiture of Emoluments) Ordinance, 1943.	The whole.
1946	XIV	The Active Service (Amendment) Ordinance, 1946.	The whole.

THE INSURANCE (AMENDMENT) ACT, 1950

No. XLVII OF 1950

An Act further to amend the Insurance Act, 1938.

[20th May, 1950.]

Be it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Insurance (Amendment) Act, 1950.

(2) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.

2. Amendment of section 1, Act IV of 1938.—For sub-section (2) of section 1 of the Insurance Act, 1938 (hereinafter referred to as the said Act), the following sub-section shall be substituted, namely:—

“(2) It extends to the whole of India except the State of Jammu and Kashmir”.

3. Amendment of section 2, Act IV of 1938.—In section 2 of the said Act,—

(1) for clause (3), the following clause shall be substituted, namely:—

‘(3) “approved securities” means—

(i) Government securities and other securities charged on the revenues of the Central Government or of the Government of Part A State or guaranteed fully as regards principal and interest by the Central Government, or the Government of any Part State;

(ii) debentures or other securities for money issued under the authority of any Central Act or Act of a State Legislature by or on behalf of a port trust or municipal corporation or city improvement trust in any presidency-town;

(iii) shares of a corporation established by law and guaranteed fully by the Central Government or the Government of a Part A State as to the repayment of the principal and the payment of dividend;

(iv) securities issued or guaranteed fully as regards principal and interest by the Government of any Part B State and specified as approved securities for the purposes of this Act by the Central Government by notification in the Official Gazette; and

(v) subject to the limitations contained in the proviso hereto, securities guaranteed fully as regards principal and interest by a Provincial Government in Pakistan or charged on the revenues of any part of that Dominion, and debentures or other securities for money issued by or on behalf of the trustees of the port of Karachi;

Provided that securities or debentures specified in item (v) shall be recognised as approved securities only for such purposes and for such period and subject to such conditions as may be prescribed.';

(2) for clause (4), the following clause shall be substituted, namely:—

'(4) "auditor" means a person qualified under the Chartered Accountants Act, 1949 (XXXVIII of 1949) to act as an auditor of companies.';

(3) after clause (4), the following clause shall be inserted, namely:—

'(4A) "banking company" and "company" shall have the meanings respectively assigned to them in clauses (c) and (d) of sub-section (1) of section 5 of the Banking Companies Act, 1949 (X of 1949);'

(4) after clause (5), the following clauses shall be inserted, namely:—

'(5A) "chief agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission—

(i) performs any administrative and organising functions for the insurer, and

(ii) procures life insurance business for the insurer by employing or causing to be employed insurance agents on behalf of the insurer;

(5B) "Controller of Insurance" or "Controller" means the officer appointed by the Central Government to perform the duties of the Controller of Insurance under this Act;'

(5) after clause (6), the following clauses shall be inserted, namely.—

'(6A) "fire insurance business" means the business of effecting, otherwise than incidentally to some other class of insurance business, contracts of insurance against loss by or incidental to fire or other occurrence customarily included among the risks insured against in fire insurance policies;

(6B) "general insurance business" means fire, marine or miscellaneous insurance business, whether carried on singly or in combination with one or more of them;'

(6) for clause (7), the following clause shall be substituted, namely:—

'(7) "Government security" means a Government security as defined in the Public Debt Act, 1944 (XVIII of 1944);'

(7) in clause (9),—

(i) in sub-clause (a) the words "or of any Part B State" shall be omitted, and

(ii) for the words "but does not include an insurance agent licensed under section 42" the words "but does not include a principal agent, chief agent, special agent, or an insurance agent" shall be substituted;

(8) in clause (10), the following words shall be added at the end, namely:—

"including business relating to the continuance, renewal or revival of policies of insurance";

(9) after clause (10), the following clause shall be inserted, namely:—

'(10A) "investment company" means a company whose principal business is the acquisition of shares, stocks, debentures or other securities;';

(10) for clause (11), the following clause shall be substituted, namely:—

'(11) "life insurance business" means the business of effecting contracts of insurance upon human life, including any contract whereby the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life, and any contract which is subject to payment of premiums for a term dependent on human life and shall be deemed to include—

(a) the granting of disability and double or triple indemnity accident benefits, if so provided in the contract of insurance,

(b) the granting of annuities upon human life; and

(c) the granting of superannuation allowances and annuities payable out of any fund applicable solely to the relief and maintenance of persons engaged or who have been engaged in any particular profession, trade or employment or of the dependents of such persons;';

(11) after clause (13), the following clauses shall be inserted, namely:—

'(13A) "marine insurance business" means the business of effecting contracts of insurance upon vessels of any description, including cargoes, freights and other interests which may be legally insured, in or in relation to such vessels, cargoes and freights, goods, wares, merchandise and property of whatever description insured for any transit by land or water, or both, and whether or not including warehouse risks or similar risks in addition or as incidental to such transit, and includes any other risks customarily included among the risks insured against in marine insurance policies;

(13B) "miscellaneous insurance business" means the business of effecting contracts of insurance which is not principally or wholly of any kind or kinds included in clauses (6A), (11) and (13A);'

(12) for clause (14A) the following clause shall be substituted, namely:—

'(14A) the expressions "State" and "States" do not include the State of Jammu and Kashmir';

(13) for clause (15), the following clauses shall be substituted, namely:—

(15) "principal agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission,—

(i) performs any administrative and organising functions for the insurer, and

(ii) procures general insurance business whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer;

(16) "private company" and "public company" have the meanings respectively assigned to them in clauses (13) and (13A) of section 2 of the Indian Companies Act, 1913 (VII of 1918);

(17) "special agent" means a person who, not being a salaried employee of an insurer, in consideration of any commission, procures life insurance business for the insurer whether wholly or in part by employing or causing to be employed insurance agents on behalf of the insurer, but does not include a chief agent.

4. Substitution of "Controller" for "Superintendent of Insurance" and "Superintendent".—In the said Act, for the words "Superintendent of Insurance" and "Superintendent", the word "Controller" shall be substituted.

5. Insertion of new sections 2A and 2B in Part I, Act IV of 1938.—In Part I, after section 2 of the said Act, the following sections shall be inserted, namely:—

"2A. Rule of construction in applying Act to Part B States.—In the application of this Act to any Part B State to which this Act extends, unless the context otherwise requires, references to any enactment in force in Part A States but not in force in that Part B State shall be construed as references to the corresponding enactment, if any, in force in that State.

2B. Appointment of Controller of Insurance.—(1) The Central Government may, by notification in the Official Gazette, appoint a person to be the Controller of Insurance under this Act.

(2) In making any appointment under this section, the Central Government shall have due regard to the following considerations, namely, whether the person to be appointed has had experience in industrial, commercial or insurance matters and whether such person has actuarial qualifications."

6. Insertion of new section 2C in Part II, Act IV of 1938.—In Part II of the said Act, sections 2A and 2B shall be renumbered as sections 2D and 2E, and before the sections as so renumbered, the following section shall be inserted, namely:—

"2C. Prohibition of transaction of insurance business by certain persons.—(1) Save as hereinafter provided, no person shall, after the commencement of the Insurance (Amendment) Act, 1950, begin to carry on any class of insurance business in the States and no insurer carrying on any class of insurance business in the States shall, after the expiry of one year from such commencement, continue to carry on any such business unless he is—

(a) a public company, or

(b) a society registered under the Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force in any State relating to co-operative societies, or

(c) a body corporate incorporated under the law of any country outside the States not being of the nature of a private company:

Provided that the Central Government may, by notification in the Official Gazette, exempt from the operation of this section to such extent for such period and subject to such conditions as it may specify, any person or insurer for the purpose of carrying on the business of granting superannuation allowances and annuities of the nature specified in sub-clause (c) of clause (11) of section 2 or for the purpose of carrying on any general insurance business:

Provided further that in the case of an insurer carrying on any general insurance business no such notification shall be issued having effect for more than three years at any one time.

(2) Every notification issued under sub-section (1) shall be laid before Parliament as soon as may be after it is issued."

7. Amendment of section 3, Act IV of 1938.—In section 3 of the said Act,—

(1) in sub-section (4),—

(i) for clause (f), the following clause shall be substituted namely:—

"(f) if the insurer makes default in complying with, or acts in contravention of, any requirement of this Act or of any rule or order made thereunder, or";

(ii) for clause (h), the following clause shall be substituted, namely:—

"(h) if the insurer carries on any business other than insurance business or any prescribed business";

(2) in sub-section (5C) for the words, figure and letter "or that he has complied with the order under section 3B" the words "or that he has complied with any requirement of this Act or of any rule or order made thereunder or that he has ceased to carry on any business other than insurance business or any prescribed business" shall be substituted;

(3) in sub-section (6), for the figures and word "5, 10 and 82", the figures, letters and word "2C, 5, 6A, 10(2A), 31A and 32" shall be substituted.

8. Amendment of section 4, Act IV of 1938.—In sub-section (1) of section 4 of the said Act, for the words and figures "the Insurance Act, 1938" the words "this Act" shall be substituted.

9. Insertion of new sections 6A, 6B and 6C in Act IV of 1938.—After section 6 of the said Act, the following sections shall be inserted, namely:—

"6A. Requirements as to capital structure and voting rights and maintenance of registers of beneficial owners of shares.—(1) No public company limited by shares having its registered office in the States, shall carry on life insurance business, unless it satisfies all the following conditions, namely:—

(i) that the capital of the company consists only of ordinary shares each of which has a single face value;

(ii) that, except during any period not exceeding one year allowed by the company for payment of calls on shares, the paid-up amount is the same for all shares, whether existing or now:

Provided that the conditions specified in this sub-section shall not apply to a public company which has, before the commencement of the Insurance (Amendment) Act, 1950, issued any shares other than ordinary shares each of which has a single face value or any shares the paid-up amount whereof is not the same for all of them for a period of three years from such commencement.

(2) Notwithstanding anything to the contrary contained in any law for the time being in force or in the memorandum or articles of association but subject to the other provisions contained in this section the voting right of every shareholder of any public company as aforesaid shall in all cases be strictly proportionate to the paid-up amount of the shares held by him.

(3) No public company as aforesaid which carries on life insurance business shall, after the commencement of the Insurance (Amendment) Act, 1950, issue any shares other than ordinary shares of the nature specified in sub-section (1).

(4) A public company as aforesaid which carries on life insurance business—

(a) shall maintain, in addition to the register of members to be maintained under the Indian Companies Act, 1913 (VII of 1913), a register of shares in which shall be entered the name, occupation and address of the beneficial owner of each share, and shall incorporate therein any change of beneficial owner declared to it within fourteen days from the receipt of such declaration;

(b) shall not register any transfer of its shares—

(i) unless, in addition to compliance being made with the provisions of section 34 of the Indian Companies Act, 1913 (VII of 1913), the transferee furnishes a declaration in the prescribed form as to whether he proposes to hold the shares for his own benefit or as a nominee, whether jointly or severally, on behalf of others, and in the latter case giving the name, occupation and address of the beneficial owner or owners, and the extent of the beneficial interest of each; and

(ii) where, after the transfer, the total paid-up holding of the transferee in the shares of the company is likely to exceed five per cent. of its paid-up capital or where the transferee is a banking or an investment company, is likely to exceed two and a half per cent. of such paid-up capital, unless the previous sanction of the Central Government has been obtained to the transfer.

(5) Every person who has any interest in any share of a company referred to in sub-section (4) which stands in the name of another person in the register of members of the company, shall, within thirty days from the commencement of the Insurance (Amendment) Act, 1950, or from the date on which he acquires such interest, whichever is later, make a declaration in the prescribed form (which shall be countersigned by the person in whose name the share is registered) to the company declaring his interest in such share, and notwithstanding anything contained in any other law or in any contract to the contrary, a person who fails to make a declaration as aforesaid in respect of any share shall be deemed to have no right or title whatsoever in that share:

Provided that nothing in this sub-section shall affect the right of a person who has an interest in any such share to establish in a court his right thereto, if the person, in whose name the share is registered, refuses to countersign the declaration as required by this sub-section:

Provided further that where any share, belonging to an individual who has made any such declaration as is referred to in this sub-section, is held by a company in its name in pursuance of any trust or for the purpose of safe custody or collection or realisation of dividend, such individual shall, notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in the memorandum or articles of association of the company which has issued the share, be deemed to be the holder of the said share for the purpose of exercising any voting rights under this section to the exclusion of any other person.

(6) If the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the commencement of the Insurance (Amendment) Act, 1950, exceeds two and a half per cent. of its paid-up capital where that person is a banking company or an investment company, or five per cent. of its paid-up capital in any other case, he shall not be entitled to any vote as a shareholder of the company in respect of such excess holding of shares.

(7) Where the total paid-up holding of any person in the shares of a company referred to in sub-section (1) on the date of the commencement of the Insurance (Amendment) Act, 1950, exceeds five per cent. of its paid-up capital where that person is a banking company or an investment company, or ten per cent. of its paid-up capital in any other case, he shall dispose of the excess holding of shares within three years from such commencement or such further period not exceeding two years as may be allowed to him by the Central Government.

(8) If, after the expiry of three years or of such further period as may be allowed to any person under sub-section (7), the total paid-up holding of any such person has not been reduced to the limits specified in that sub-section, any shares in excess of the limits specified in that sub-section shall vest in the Administrator General of the State in which the registered office of the company concerned is situate and the Administrator General shall take such steps as may be necessary for taking charge of any property which has so vested in him and shall dispose of the said shares and the proceeds thereof in such manner as may be prescribed.

(9) Subject to the other provisions contained in this section, but notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913), or in the memorandum or articles of association of any such company as is referred to in sub-section (1), no such company shall refuse to register the transfer of any shares where the transfer is for the purpose of securing compliance with the provisions of sub-sections (7) and (8).

(10) The Central Government may, subject to such restrictions as it may think fit to impose, exempt from the operation of sub-sections (6), (7) and (8) any insurance company, in any case where the total paid-up holding of such insurance company in the shares of any other insurance company exceeds the limits specified in the said sub-sections, if the other insurance company is or is to be made a subsidiary company of the insurance company.

Explanation.—For the purposes of this section, the holding of a person in the shares of a company shall be deemed to include—

(i) the total paid-up holding in such shares held by such person in the name of others; and

(ii) if any shares of the company are held—

(a) by a public limited company, of which such person is a member holding more than ten per cent. of the paid-up capital, or

(b) by a private limited company, of which such person is a member, or

(c) by a company, of which such person is a managing director, manager, managing agent or in which he has a controlling interest, or

(d) by a firm in which such person is a partner, or

(e) by such person jointly with others,

such part of the total paid-up holding of the company or firm or of the total joint holding in those shares, as is proportionate to the contribution made by such person to the paid-up capital of the company, the paid-up capital of the firm or the joint holding, as the case may be.

6B. *Provision for securing compliance with requirements relating to capital structure.*—(1) For the purpose of enabling any public company carrying on life insurance business to bring its capital structure into conformity with the requirements of section 6A, an officer appointed in this behalf by the Central Government may, notwithstanding anything contained in the Indian Companies Act, 1913 (VII of 1913),—

(a) examine any scheme proposed for the purpose aforesaid by the directors of the company:

Provided that—

(i) the scheme has been placed before a meeting of the shareholders for their opinion and has been forwarded to the officer together with the opinion of the shareholders thereon; and

(ii) the scheme does not involve any diminution of the liability of the shareholders in respect of unpaid-up share capital;

(b) invite objections and suggestions in respect of the scheme so proposed; and

(c) after considering such objections and suggestions to the scheme so proposed, sanction it with such modifications as he may consider necessary or desirable

(2) Any shareholder or other person aggrieved by the decision of the officer sanctioning a scheme under sub-section (1) may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate for the purpose of modifying or correcting any such scheme for the purpose specified in sub-section (1).

(3) The decision of the High Court where an appeal has been preferred to it under sub-section (2), or of the officer aforesaid where no such appeal has been preferred, shall be final and binding on all the shareholders and other persons concerned.

6C. *Conversion of company limited by shares into company limited by guarantee.*—(1) Where a public company limited by shares carrying on insurance business has passed a special resolution for converting itself into a public company limited by guarantee, it may apply to the Central Government with a scheme for putting the special resolution into effect, including any provision for the alteration of the memorandum or articles of association in so far as it may be necessary for this purpose.

(2) If the Central Government, after giving such notice to any person concerned as it thinks fit, is satisfied—

(a) that the scheme makes suitable provision with respect to the repayment, conversion or liquidation of the paid-up capital of the company,

(b) that the consent of the creditors to the conversion of the company limited by shares into a company limited by guarantee has been obtained, or that suitable provisions have been made for discharging, determining or securing the debts or claims of such creditors, and

(c) that the scheme is otherwise reasonable, it may sanction the scheme and thereupon the scheme shall become binding on the company and on all the persons concerned.

(3) Against the decision of the Central Government sanctioning a scheme under sub-section (2), any person aggrieved thereby may, within ninety days of the date of the order sanctioning the scheme, prefer an appeal to the High Court within whose jurisdiction the registered office of the insurer is situate.

(4) The decision of the High Court where an appeal has been preferred to it under sub-section (3) or of the Central Government where no such appeal has been preferred, shall be final and binding on all the persons concerned.

(5) Where a scheme has been sanctioned under this section, the company shall file with the Registrar of companies a certified copy of the scheme as sanctioned, and thereupon the provisions of the Indian Companies Act, 1913 (VII of 1913), relating to companies limited by guarantee shall become applicable to the company."

10. Amendment of section 7, Act IV of 1938.—In section 7 of the said Act,—

(i) in clause (d) of sub-section (1), the words "that is to say, insurance which is not in the opinion of the Central Government principally or wholly of any kind or kinds included in clauses (a), (b) or (c)" shall be omitted;

(ii) in sub-section (4) and the proviso to sub-section (5), the words "and not being an insurer incorporated in or domiciled in the United Kingdom" shall be omitted.

11. Amendment of section 10, Act IV of 1938.—In sub-section (2) of section 10 of the said Act, for the words beginning with the words "and a statement, certified by an auditor" and ending with the words "in any case think fit to allow", the following shall be substituted, namely:—

"and every insurer shall, within the time limited in sub-section (1) of section 15 in regard to the furnishing of the statements and accounts referred to in section 11, furnish to the Controller a statement showing in detail such assets as at the close of every calendar year duly certified by an auditor or by a person qualified to audit under the law of the insurer's country:

Provided that such statement shall, in the case of an insurer to whom section 11 applies, be set out as a part of the balance sheet mentioned in clause (a) of sub-section (1) of that section:

Provided further that an insurer may show in such statement all the assets held in his life department, but at the same time showing any deductions on account of general reserves and other liabilities of that department:

Provided also that the Controller may call for a statement similarly certified of such assets as at any other date specified by him to be furnished within a period of three months from the date with reference to which the statement is called for."

12. Amendment of section 11, Act IV of 1938.—In sub-section (2) of section 11 of the said Act,—

(i) for the words "accompanied by a statement containing the names and descriptions of the persons in charge of the management of the business", the words "accompanied by a statement containing the names, descriptions and occupations of, and the directorships held by, the persons in charge of the management of the business" shall be substituted, and

(ii) the words "by such persons" shall be omitted.

13. Amendment of section 13, Act IV of 1938.—In section 13 of the said Act,—

(i) in sub-section (1), and the proviso to sub-section (4), for the words "in every five years" the words "in every three years" shall be substituted;

(ii) to sub-section (1), the following provisos shall be added, namely—

"Provided that the Controller may, having regard to the circumstances of any particular insurer, allow him to have the investigation made as at a date not later than four years from the date as at which the previous investigation was made:

Provided further that for an insurer carrying on life insurance business in the States at the commencement of the Insurance (Amendment) Act, 1950, the last date as at which the first investigation after such commencement should be caused to be made by an actuary shall be—

(a) the 31st day of December, 1950, or the date of expiration of five years from the date as at which the last investigation was made by an actuary before such commencement, whichever is earlier, where the said last investigation was at a date—

(i) before the 31st day of December, 1946, but not more than five years before such commencement, or

(ii) after the 30th day of December, 1946, but before the 31st day of December, 1947, and had disclosed a deficit in the life insurance fund;

(b) the 31st day of December, 1951, where the last investigation by an actuary before such commencement was at a date—

(i) after the 30th day of December, 1946, but before the 31st day of December, 1947, and did not disclose a deficit in the life insurance fund; or

(ii) after the 30th day of December, 1947, but before the 31st day of December, 1948;

(c) the 31st day of December, 1952, where the last investigation by an actuary before such commencement was as at any date after the 30th day of December, 1948, but before the 1st day of January, 1950:

Provided also that, in the case of an insurer who has not caused an investigation to be made by an actuary as at any date prior to such commencement, the date of commencement of life insurance business in the States shall, for the purpose of the preceding proviso, be deemed to be the date as at which the last investigation was made by an actuary before such commencement and such investigation shall be deemed to have disclosed no deficit in the life insurance fund."

14. Amendment of section 19, Act IV of 1938.—In section 19 of the said Act, for the words "an abstract of the proceedings of every general meeting" the words "a certified copy of the minutes of the proceedings of every general meeting, as entered in the Minutes Book of the insurer" shall be substituted.

15. Amendment of section 21, Act IV of 1938.—In clause (d) of sub-section (1) of section 21 of the said Act,—

(i) after the words "delivered to the insurer" the words "or of such further time as the Controller may specify in the requisition" shall be inserted;

(ii) after the word and figures "section 28" the words, figures, and letter "or section 28A" shall be inserted.

16. Substitution of new section for section 27, Act IV of 1938.—For section 27 of the said Act, the following section shall be substituted, namely:—

27. Investment of assets.—(1) Every insurer shall invest and at all times keep invested assets equivalent to not less than the sum of—

(a) the amount of his liabilities to holders of life insurance policies in India on account of matured claims, and

(b) the amount required to meet the liability on policies of life insurance maturing for payment in India, less—

(i) the amount of premiums which have fallen due to the insurer on such policies but have not been paid and the days of grace for payment of which have not expired, and

(ii) any amount due to the insurer for loans granted on and within the surrender values of policies of life insurance maturing for payment in India issued by him or by an insurer whose business he has acquired and in respect of which he has assumed liability,

in the manner following, namely, twenty-five per cent. of the said sum in Government securities, a further sum equal to not less than twenty-five per cent. of the said sum in Government securities or other approved securities and the balance in any of the approved investments specified in sub-section (1) of section 27A or, subject to the limitations, conditions and restrictions specified in sub-section (2) of that section, in any other investment.

(2) For the purposes of sub-section (1),—

(a) the amount of any deposit made under section 7 or section 98 by the insurer in respect of his life insurance business shall be deemed to be assets invested or kept invested in Government securities;

(b) the securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom shall be regarded as approved securities other than Government securities for a period of four years from the commencement of the Insurance (Amendment) Act, 1950, in the manner and to the extent hereinafter specified, namely,—

(i) during the first year, to the extent of twenty-five per cent in value of the sum referred to in sub-section (1);

(ii) during the second year, to the extent of eighteen and three-fourths per cent. in value of the said sum;

(iii) during the third year, to the extent of twelve and a half per cent. in value of the said sum; and

(iv) during the fourth year, to the extent of six and a quarter per cent. in value of the said sum.

Provided that, if the Central Government so directs in any case, the securities specified in clause (b) shall be regarded as approved securities other than Government securities for a longer period than four years, but not exceeding six years in all, and the manner in which and the extent to which the securities shall be so regarded shall be as specified in the direction;

(c) any prescribed assets shall, subject to such conditions, if any, as may be prescribed, be deemed to be assets invested or kept invested in approved investments specified in sub-section (1) of section 27A.

(3) In computing the assets referred to in sub-section (1),—

(a) any investment made with reference to any currency other than the Indian rupee which is in excess of the amount required to meet the liabilities of the insurer in India with reference to that currency, to the extent of such excess; and

(b) any investment made in the purchase of any immovable property outside India or on the security of any such property, shall not be taken into account:

Provided that nothing contained in this sub-section shall affect the operation of sub-section (2).

Provided further that the Central Government may, either generally or in any particular case, direct that any investment, whether made before or after the commencement of the Insurance (Amendment) Act, 1950, and whether made in or outside India, shall, subject to such conditions as may be imposed, be taken into account in such manner as may be specified in computing the assets referred to in sub-section (1) and where any direction has been issued under this proviso copies thereof shall be laid before Parliament as soon as may be after it is issued.

(4) Where an insurer has accepted reinsurance in respect of any policies of life insurance issued by another insurer and maturing for payment in India or has ceded reinsurance to another insurer in respect of any such policies issued by himself, the sum referred to in sub-section (1) shall be increased by the amount of the liability involved in such acceptance and decreased by the amount of the liability involved in such cession.

(5) The Government securities and other approved securities in which assets are under sub-section (1) to be invested and kept invested shall be held by the insurer free of any encumbrance, charge, hypothecation or lien.

(6) The assets required by this section to be held invested by an insurer incorporated or domiciled outside the States shall, except to the extent of any part thereof which consists of foreign assets held outside the States, be held in the States, and all such assets shall be held in trust for the discharge of the liabilities of the nature referred to in sub-section (1) and shall be vested in trustees resident in the States and approved by the Central Government, and the instrument of trust under this sub-section shall be executed by the insurer with the approval of the Central Government and shall define the manner in which alone the subject-matter of the trust shall be dealt with.

Explanation.—This sub-section shall apply to an insurer incorporated in the States whose share-capital to the extent of one-third is owned by, or the members of whose governing body to the extent of one-third consists of members domiciled elsewhere than in the States."

17. **Insertion of new section 27A in Act IV of 1938.**—After section 27 of the said Act, the following section shall be inserted, namely:—

"27A. Further provisions regarding investments.—(1) No insurer shall invest or keep invested any part of his controlled fund otherwise than in any of the following approved investments, namely:—

(a) approved securities;

(b) securities of, or guaranteed as to principal and interest by, the Government of the United Kingdom;

(c) debentures or other securities for money issued with the permission of the State Government by any municipality in a State;

(d) debentures or other securities for money issued by any authority constituted under any housing or building scheme approved by the Central or a State Government, or by any authority or body constituted by any Central Act or Act of a State Legislature;

(e) first mortgages on immovable property situated in India under any housing or building scheme of the insurer approved by the Central Government or a State Government;

(f) debentures secured by a first charge on any immovable property, plant or equipment of any company which has paid interest in full for the five years immediately preceding or for at least five out of the six or seven years immediately preceding on such or similar debentures issued by it;

(g) debentures secured by a first charge on any immovable property, plant or equipment of any company where either the book value or the market value, whichever is less, of such property, plant or equipment is more than three times the value of such debentures;

(h) first debentures secured by a floating charge on all its assets of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

(i) preference shares of any company which has paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

(j) preference shares of any company on which dividends have been paid for the five years immediately preceding or for at least five out of the six or seven years immediately preceding and which have priority in payment over all the ordinary shares of the company in winding up;

(k) shares of any company which have been guaranteed by another company, such other company having paid dividends on its ordinary shares for the five years immediately preceding or for at least five out of the six or seven years immediately preceding;

Provided that the total amount of shares of all the companies under guarantee by the guaranteeing company is not in excess of fifty per cent of the paid-up amount of preference and ordinary shares of the guaranteeing company;

(l) shares of any company on which dividends of not less than four per cent, including bonus have been paid for the seven years immediately preceding or for at least seven out of the eight or nine years immediately preceding;

(m) first mortgages on immovable property situated in the States or in any other country where the insurer is carrying on insurance business

Provided that the property mortgaged is not lease-hold property with an outstanding term of less than thirty years and the value of the property exceeds by one-third, or if it consists of buildings, exceeds by one-half, the mortgage money;

(n) immovable property situated in the States or in any other country where the insurer is carrying on insurance business:

Provided that the property is free of all encumbrances;

(o) loans on life interests, or on policies of life insurance within their surrender values issued by him or by an insurer whose business he has acquired and in respect of which business he has assumed liability;

(p) life interests;

(q) fixed deposits with banks included for the time being in the Second Schedule to the Reserve Bank of India Act, 1934 (II of 1934), or with co-operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force, the primary object of which is to finance other co-operative societies similarly registered;

(r) debentures of, or shares in co-operative societies registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force;

(s) such other investments as the Central Government may, by notification in the Official Gazette, declare to be approved investments for the purposes of this section.

(2) Notwithstanding anything contained in sub-section (1), an insurer being a company or a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95, may, subject to the provisions contained in the next succeeding sub-sections, invest or keep invested any part of his controlled fund otherwise than in an approved investment, if—

(i) after such investment, the total amounts of all such investments of the insurer do not exceed fifteen per cent. of the sum referred to in sub-section (1) of section 27,

(ii) the investment is made, or, in the case of any investment already made, the continuance of such investment is with the consent of all the directors present at a meeting and eligible to vote, special notice of which has been given to all the directors then in the States, and all such investments, including investments in which any director is interested, are reported without delay to the Controller with full details of the investments and the extent of the director's interest in any such investment.

(3) An insurer shall not out of his controlled fund invest or keep invested in the shares of any one banking company or investment company more than—

(a) two and a quarter per cent. of the sum referred to in sub-section (1) of section 27, or

(b) two per cent. of the subscribed share capital and debentures of the banking company or investment company concerned, whichever is less.

(4) An insurer shall not out of the controlled fund invest or keep invested in the shares or debentures of any one company other than a banking company or investment company more than—

(a) two and a quarter per cent. of the sum referred to in sub-section (1) of section 27, or

(b) ten per cent. of the subscribed share capital and debentures of the company, whichever is less:

Provided that nothing in this sub-section shall apply to any investment made with the previous consent of the Central Government by an insurer, being a company with a view to forming a subsidiary company carrying on insurance business.

(5) An insurer shall not out of his controlled fund invest or keep invested any sum in the shares or debentures of any private limited company.

(6) Where an investment is in partly paid-up shares, the uncalled liability on such shares shall be added to the amount invested for the purpose of computing the percentages referred to in clause (a) of sub-section (3) and clause (a) of sub-section (4).

(7) Notwithstanding anything contained in sub-sections (3) and (4), where new shares are issued to the existing share-holders by a company the existing shares of which are covered by clause (i) or clause (k) or clause (l) of sub-section (1) and of which an insurer is already a shareholder, the insurer may subscribe to such new shares:

Provided that the proportion of new shares subscribed by him does not exceed the proportion which the paid-up amount on the shares held by him immediately before such subscription bears to the total paid-up capital of the company at the time of such subscription.

(8) If, on an application submitted through the Controller the Central Government is satisfied that special grounds exist warranting such exemption, the Central Government may for such period, to such extent and in relation to such particular investments and subject to such conditions as may be specified by it in this behalf, exempt an insurer from all or any of the provisions of sub-sections (3), (4) and (7).

(9) An insurer shall not keep more than three per cent. of the controlled fund in fixed deposit or current deposit, or partly in fixed deposit and partly in current deposit, with any one banking company or with any one co-operative society registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force and doing banking business:

Provided that in applying this sub-section to the amount in deposit with a banking company on any day all the premiums collected by that company on behalf of the insurer during the preceding thirty days shall be excluded:

Provided further that the Controller may permit a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95 to keep more than three per cent. of its controlled fund in fixed deposit with any co-operative society referred to in this sub-section, if the fixed deposit is secured by a first mortgage on any immovable property.

(10) All assets forming the controlled fund, not being Government securities or other approved securities in which assets are to be invested or held invested in accordance with section 27, shall (except for a part thereof not exceeding one tenth of the controlled fund in value which may, subject to such conditions and restrictions as may be prescribed, be offered as security for any loan taken for purposes of any investment), be held free of any encumbrance, charge, hypothecation or lien.

(11) If at any time the Central Government considers any one or more of the investments constituting an insurer's controlled fund to be unsuitable

or undesirable, the Central Government may, after giving the insurer an opportunity of being heard, direct him to realise the investment or investments, and the insurer shall comply with the direction within such time as may be specified in this behalf by the Central Government.

(12) Every insurer in existence at the commencement of the Insurance (Amendment) Act, 1950, whose investments or any part thereof at such commencement contravene or contravenes any of the provisions of this section, shall, within ninety days from such commencement, submit to the Controller a report specifying all such investments, and, if the Central Government is satisfied that it will not be in the interest of the insurer or any class of insurers generally to realise any such investments, it may, by order, direct that the provisions of this section [other than the provisions contained in sub-section (11)] shall not apply in relation to any such investments or to any class of investments generally for such period or periods as may be specified in the order.

(13) Without prejudice to the powers given to the Central Government by sub-section (11), nothing contained in this section shall be deemed to require any insurer to realise any investment made in conformity with the provisions of sub-section (1) after the commencement of this Act which, after the making thereof, has ceased to be an approved investment within the meaning of this section.

(14) Nothing contained in this section shall be deemed to affect in any way the manner in which any moneys relating to the provident fund of any employee or to any security taken from any employee or other moneys of a like nature are required to be held by or under any Central Act, or Act of a State Legislature.

Explanation.—In this section “controlled fund” means—

(a) in the case of any insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 and carrying on life insurance business—

(i) all his funds, if he carries on no other class of insurance business;

(ii) all the funds appertaining to his life insurance business if he carries on some other class of insurance business also; and

(b) in the case of any other insurer carrying on life insurance business—

(i) all his funds in India, if he carries on no other class of insurance business;

(ii) all the funds in India appertaining to his life insurance business if he carries on some other class of insurance business also;

but does not include any fund or portion thereof in respect of which the Controller is satisfied that such fund or portion thereof, as the case may be, is regulated by the law of any country outside India or in respect of which the Controller is satisfied that it would not be in the interest of the insurer to apply the provisions of this section.”

18. Amendment of section 28, Act IV of 1938.—In section 28 of the said Act,—

(i) in sub-section (1), the words “registered under this Act” shall be omitted;

(ii) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) In respect of the Government securities and other approved securities invested and kept invested in accordance with sub-section (1) of section 27 an insurer shall submit along with the returns referred to in sub-sections (1) and (2) a certificate, where such assets are in the

custody of a banking company, from that company, and in any other case, from the chairman, two directors and a principal officer, if the insurer is a company, or otherwise from a principal officer of the insurer, to the effect that the securities are held free of any encumbrance, charge, hypothecation, or lien, and every such certificate after the first shall also state that since the date of the certificate immediately preceding all the securities have been so held.

(2B) In respect of the assets forming the controlled fund within the meaning of section 27A, and which do not form part of the Government securities and approved securities invested and kept invested in accordance with section 27, an insurer shall submit, along with the returns referred to in sub-sections (1) and (2), a statement, where such assets are in the custody of a banking company, from that company, and, in any other case, from the chairman, two directors and a principal officer if the insurer is a company, or from a principal officer of the insurer if the insurer is not a company, specifying the assets, which are subjected to a charge and certifying that the other assets are held free of any encumbrance, charge, hypothecation, or lien, and every such statement after the first shall also specify the charges created in respect of any of those assets since the date of the statement immediately preceding, and, if any such charges have been liquidated, the date on which they were so liquidated."

19. Insertion of new section 28A in Act IV of 1938.—After section 28 of the said Act, the following section shall be inserted, namely:—

"28A. *Return of investments relating to controlled fund and changes therein.*—(1) Every insurer carrying on life insurance business, shall every year, within thirty-one days from the beginning of the year submit to the Controller a return in the prescribed form showing as at the 31st day of December of the preceding year the investments made out of the controlled fund referred to in section 27A, and every such return shall be certified by a principal officer of the insurer.

(2) Every insurer referred to in sub-section (1) shall also submit to the Controller a return in the prescribed form showing all the changes that occurred in the investments aforesaid during each of the quarters ending on the last day of March, June, September and December within thirty-one days from the close of the quarter to which it relates, and every such return shall be certified by a principal officer of the insurer."

20. Amendment of section 29, Act IV of 1938.—In section 29 of the said Act,—

(i) in the first proviso to sub-section (1), for the words "nothing herein contained" the words "nothing contained in this sub-section" shall be substituted;

(ii) the second and third provisos to sub-section (1) shall be omitted;

(iii) to the fourth proviso the following words shall be added, namely:—

"and where any such loan or advance is made out of any life insurance fund the matter shall be reported within thirty days of the making of such loan or advance to the Controller.";

(iv) after sub-section (2), the following sub-sections shall be added, namely:—

“(3) Subject to the provisions of sub-section (1), no insurer carrying on life insurance business shall grant—

(a) any loans or temporary advances either on hypothecation of property or on personal security or otherwise, except such loans as are specified in sub-section (1) of section 27A;

(b) temporary advances to any chief, special or insurance agent to facilitate the carrying out of his functions as such except in cases where such advances do not exceed in the aggregate—

(i) in the case of a chief agent, the over-riding renewal commission earned by him during the year immediately preceding,

(ii) in the case of a special agent, the renewal commission earned by him during the year immediately preceding,

(iii) in the case of an insurance agent, the renewal commission earned by him during the year immediately preceding.

Explanation.—The temporary advance referred to in clause (b) of this sub-section shall also be admissible in the case of any special agent or insurance agent newly appointed, but such advance—

(a) shall be repayable within two years from the date on which such special agent or insurance agent was first appointed, and

(b) shall not exceed, in the case of the special agent, five hundred rupees, and, in the case of the insurance agent, one hundred rupees,

and the total amount of all advances so made shall not exceed ten thousand rupees in the case of any insurer whose business in force is one crore of rupees or more and five thousand rupees in any other case.

(4) Every loan or advance existing at the commencement of the Insurance (Amendment) Act, 1950, which contravenes the provisions of sub-section (3) shall be notified by the insurer to the Controller within thirty days of such commencement and shall notwithstanding any contract to the contrary be repaid within one year from such commencement.

(5) Where any event occurs giving rise to circumstances, the existence of which at the time of the grant of any subsisting loan or advance would have made such grant a contravention of this section, such loan or advance shall, notwithstanding anything in any contract to the contrary, be repaid within three months from the occurrence of such event.

(6) In case of default in complying with the provisions of sub-section (4) or sub-section (5), the director, manager, auditor, actuary, officer or partner, or the chief, special or insurance agent concerned shall, without prejudice to any other penalty which he may incur, cease to hold office under, or to act for, the insurer granting the loan on the expiry of the said period of one year or three months, as the case may be.”

21. Amendment of section 30, Act IV of 1938.—In section 30 of the said Act, after the word and figures “section 27” the word, figures and letter “section 27A” shall be inserted.

22. Amendment of section 31, Act IV of 1938.—In section 31 of the said Act, for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) Nothing contained in this section shall be deemed to prohibit the endorsement in favour of a banking company of any security or other document solely for the purpose of collection or for realisation of interest, bonus or dividend.”

23. Insertion of new sections 31A and 31B in Act IV of 1938.—After section 31 of the said Act, the following sections shall be inserted, namely:—

“31A. Provisions relating to managers, etc.”—(1) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913 (VII of 1913), or in the articles of association of the insurer, if a company, or in any contract or agreement, no insurer shall after the expiry of one year from the commencement of the Insurance (Amendment) Act, 1950,—

(a) be managed by a company or a firm, or

(b) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus or a share in the valuation surplus in respect of the life insurance business of the insurer, or

(c) be directed or managed by, or employ as manager or officer or in any capacity, any person whose remuneration or any part thereof takes the form of commission or bonus in respect of the general insurance business of the insurer:

Provided that nothing in this sub-section shall be deemed to prohibit—

(i) the payment of commission to a chief agent, special agent or an insurance agent, in respect of life insurance business procured by or through him;

(ii) the payment of commission to a principal agent or an insurance agent in respect of general insurance business procured by or through him;

(iii) the payment of commission, with the approval of the Central Government and for such period as it may determine, to a person not being an officer of an insurer who was, on the 1st day of November, 1944, employing on behalf of an insurer, chief agents or special agents and continues so to do in respect of insurance business procured by or through him;

(iv) the employment of any individual in a clerical or other subordinate capacity who, as an insurance agent, receives commission in respect of insurance business procured by him;

(v) the employment as an officer of any individual who receives renewal commission in respect of life insurance business procured by him in his capacity as an insurance agent or as an employer of agents before such employment, or before the commencement of the Insurance (Amendment) Act, 1950, whichever is later;

(vi) the payment of a share in the profits of general insurance business;

(vii) the payment of bonus in any year on a uniform basis to all salaried employees or any class of them by way of additional remuneration, such bonus, in the case of any employee, not exceeding in

amount the equivalent of his salary for a period which, in the opinion of the Central Government, is reasonable having regard to the circumstances of the case.

(2) Notwithstanding anything to the contrary contained in the Indian Companies Act, 1913, or in the articles of association of the insurer, being a company, or in any contract or agreement, no manager, managing director or any other person concerned in the management of an insurer's business shall be entitled to nominate a successor to his office, and no person so nominated, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be entitled to hold or to continue in such office.

(3) If in the case of any insurance company provision is made by the articles of association of the company or by an agreement entered into between any person and the company for empowering a director or manager or other officer of the company to assign his office to any other person, any assignment of office made in pursuance of the said provision, shall, notwithstanding anything to the contrary contained in the said provision or in section 86B of the Indian Companies Act, 1913, be void.

(4) No person shall have any right, whether in contract or otherwise, to any compensation for any loss incurred by reason of the operation of any provision of this section.

31B. Power to restrict payment of excessive remuneration.—(1) The Central Government may if it is satisfied that any insurer, in the case of an insurer specified in sub-clause (a) (ii) or sub-clause (b) of clause (9) of section 2 in respect of all insurance business transacted by him, and in the case of any other insurer in respect of the insurance business transacted by him in India, is paying any person remuneration, whether by way of commission or otherwise, on a scale disproportionate, according to the normal standards prevailing in insurance business, to the resources of the insurer, call upon the insurer to comply within six months with such directions as it may think fit to issue in the matter, and if compliance with the directions so issued requires the alteration of any of the terms of the contract entered into by the insurer with such person, no compensation shall be payable to such person by the insurer by reason only of such alteration or of the resignation of such person if the altered terms are not acceptable to him and no payment by way of renewal commission or otherwise shall be made to such person by the insurer in respect of any premiums paid after the date of such resignation except at such rate as may be approved by the Central Government in this behalf.

(2) Every insurer shall, before the close of the month following every year, submit to the Controller a statement in the prescribed form showing the remuneration paid, whether by way of commission or otherwise, to any person in cases where such remuneration exceeds the sum of five thousand rupees in that year.

(3) Where any person not being a chief agent, principal agent or special agent is in receipt of remuneration exceeding the sum of five thousand rupees in any year, the Controller may, by notice in writing, require the insurer to submit certified copies of the agreement entered into between the insurer and any such person, and the insurer shall comply with any such requisition within the time specified in the notice."

24. Insertion of new section 32A in Act IV of 1938.—After section 82 of the said Act, the following section shall be inserted, namely:—

“32A. Prohibition of common officers and requirement as to whole-time officers.—(1) A managing director or other officer of an insurer specified in sub-clause (b) of clause (9) of section 2 and carrying on life insurance business shall not be a managing director or other officer of any other insurer carrying on life insurance business or of a banking company or of an investment company:

Provided that the Central Government may permit such managing director or other officer to be a managing director or other officer of any other insurer carrying on life insurance business for the purpose of amalgamating the business of the two insurers or transferring the business of one insurer to the other.

(2) Where an insurer specified in sub-clause (b) of clause (9) of section 2 has a life insurance fund of more than twenty-five lakhs of rupees or insurance funds totalling more than fifty lakhs of rupees, the manager, managing director or other officer of the insurer shall be a whole-time employee of the insurer:

Provided that the Central Government may, for such period as it thinks fit, permit the employment of any specified person as a part-time manager, managing director or other officer of such insurer.

(3) Nothing in this section shall prevent—

(a) the manager, managing director or other officer of an insurer being the manager, managing director or other officer of a subsidiary company of the insurer with the previous approval of the Central Government;

(b) the manager, managing director or other officer of an insurer, exclusively carrying on life insurance business, being the manager, managing director or other officer of an insurer not carrying on life insurance business;

(c) any officer of a branch of one insurer carrying on general insurance business from being any officer of a branch in the same town of another insurer carrying on general insurance business;

(d) an officer in the employment of an insurer from giving professional advice;

Explanation.—In this section the expression ‘officer’ does not include a director.”

25. Substitution of new section for sections 33 and 34 in Act IV of 1938.—For sections 33 and 34 of the said Act, the following section shall be substituted, namely:—

“33. Power of investigation.—(1) The Central Government may at any time, by order in writing, direct the Controller or any other person specified in the order to investigate the affairs of any insurer and to report to the Central Government on any investigation made by him:

Provided that the Controller or the other person may, wherever necessary, employ an auditor or actuary or both for the purpose of assisting him in any investigation under this section.

(2) It shall be the duty of every manager, managing director or other officer of the insurer to produce before the person directed to make the investigation under sub-section (1) all such books of account, registers and other documents in his custody or power and to furnish him with any statements and information relating to the affairs of the insurer as the said person may require of him within such time as the said person may specify.

(3) Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director or other officer of the insurer in relation to his business and may administer oaths accordingly.

(4) On receipt of any report under sub-section (1), the Central Government may, after giving such opportunity to the insurer to make a representation in connection with the report as, in the opinion of the Central Government, seems reasonable, by order in writing,—

(a) require the insurer to take such action in respect of any matter arising out of the report as the Central Government may think fit, or

(b) direct the Controller to cancel the registration of the insurer; or

(c) direct the Controller to apply to the Court for the winding up of the insurer, if a company, whether the registration of the insurer has been cancelled under clause (b) or not.

(5) No order made under this section other than an order made under clause (b) of sub-section (4) shall be capable of being called in question in any court.

(6) All expenses of, and incidental to, any investigation made under this section shall be defrayed by the insurer, shall have priority over other debts due from the insurer and shall be recoverable as an arrear of land-revenue."

26. Amendment of section 35, Act IV of 1938.—In section 35 of the said Act,—

(i) in sub-section (1), for the words "Court having jurisdiction over one or other of the parties concerned", the word "Controller" shall be substituted;

(ii) in sub-section (3), for the word "Court" and the words "Central Government", wherever they occur, the word "Controller" shall be substituted;

(iii) sub-section (4) shall be omitted.

27. Amendment of section 36, Act IV of 1938.—Section 36 of the said Act shall be renumbered as sub-section (1) of that section, and

(a) in that sub-section as so renumbered, for the words "Court" and "it", wherever they occur, the words "Controller" and "he" shall respectively be substituted; and

(b) after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

"(2) If the arrangement involves a reduction of the amount of the insurance and other contracts of the transferor insurer or of any or all of the insurers concerned in the amalgamation, the Controller may sanction the arrangement, reducing the amount of such contracts upon such terms and subject to such conditions as he may think proper, and the reduction of contracts as sanctioned by the Controller shall be valid and binding on all the parties concerned."

28. Amendment of section 37, Act IV of 1938.—In section 37 of the said Act, for the word "Court", in both the places where it occurs, and for the words "Central Government", the word "Controller" shall be substituted.

29. Amendment of section 39, Act IV of 1938.—In section 39 of the said Act, to sub-section (1) the following proviso shall be added, namely:—

"Provided that, where any nominee is a minor, it shall be lawful for the policy-holder to appoint in the prescribed manner any person to receive

the money secured by the policy in the event of his death during the minority of the nominee."

30. Amendment of section 40, Act IV of 1938.—In section 40 of the said Act,—

(i) in sub-section (1), for the words "or a person acting on behalf of an insurer who for purposes of insurance business employs insurance agents" the words "or a principal, chief or special agent" shall be substituted;

(ii) in sub-section (1A), after the words "and sections" the figures and letter "40A" shall be inserted;

(iii) to sub-section (2) the following further proviso shall be added, namely:—

"Provided further that nothing in this sub-section shall apply in respect of any policy of life insurance issued after the 31st day of December, 1950, or in respect of any policy of general insurance issued after the commencement of the Insurance (Amendment) Act, 1950.;"

(iv) in the proviso to sub-section (2A), after the words "notice in writing to the insurance agent through whom the policy was effected", the words "if such agent continues to be an agent of the insurer" shall be inserted.

31. Insertion of new sections 40A to 40C in Act IV of 1938.—After section 40 of the said Act, the following sections shall be inserted, namely:—

"40A. Limitation of expenditure on commission.—(1) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through an insurance agent, an amount exceeding—

(a) where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, two per cent. of that premium,

(b) where the policy grants a deferred annuity in consideration of more than one premium, seven and a half per cent. of the first year's premium, and two per cent. of each renewal premium, payable on the policy, and

(c) in any other case, thirty-five per cent. of the first year's premium, seven and a half per cent. of the second and third year's renewal premium, and thereafter five per cent. of each renewal premium, payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business, may pay to an insurance agent, and an insurance agent may receive from such an insurer, forty per cent. of the first year's premium payable on the policy.

(2) No person shall pay or contract to pay to a special agent, and no special agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of life insurance issued in India by an insurer after the 31st day of December, 1950, and effected through a special agent, an amount exceeding—

(a) in a case referred to in clause (a) of sub-section (1), one half per cent. of the premium,

(b) in a case referred to in clause (b) of sub-section (1), two per cent. of the first year's premium payable on the policy, and

(c) in a case referred to in clause (c) of sub-section (1), fifteen per cent. of the first year's premium payable on the policy:

Provided that in a case referred to in clause (c), an insurer, during the first ten years of his business, may pay to a special agent, and a special agent may receive from such an insurer, seventeen and a half per cent. of the first year's premium payable on the policy.

(3) No person shall pay or contract to pay to an insurance agent, and no insurance agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through an insurance agent, an amount exceeding—

(a) where the policy relates to fire or miscellaneous insurance fifteen per cent. of the premium payable on the policy, and

(b) where the policy relates to marine insurance, ten per cent. of the premium payable on the policy.

(4) No person shall pay or contract to pay to a principal agent, and a principal agent shall receive or contract to receive, by way of commission or remuneration in any form, in respect of any policy of general insurance issued in India by an insurer after the commencement of the Insurance (Amendment) Act, 1950, and effected through a principal agent, an amount exceeding—

(a) in the case referred to in clause (a) of sub-section (3), twenty per cent. of the premium payable on the policy, and

(b) in the case referred to in clause (b) of that sub-section, fifteen per cent. of the policy,

less any commission payable to any insurance agent in respect of the said policy:

Provided that the Central Government may, in such circumstances and to such extent and for such period as may be specified, authorise the payment of commission or remuneration exceeding the limits specified in this sub-section to a principal agent of an insurer incorporated or domiciled elsewhere than in India, if such agent carries out and has continuously carried out in his own office duties on behalf of the insurer which would otherwise have been performed by the insurer.

(5) Without prejudice to the provisions of section 102 in respect of contravention of any of the provisions of the preceding sub-sections by an insurer, any insurance agent who contravenes the provisions of sub-section (1) or sub-section (3) shall be punishable with fine which may extend to one hundred rupees.

40B. Limitation of expenses of management in life insurance business.

—(1) Every insurer transacting life insurance business in India shall furnish to the Controller, within such time as may be prescribed, statements in the prescribed form certified by an actuary on the basis of premiums currently used by him in regard to new business in respect of mortality, rate of interest, expenses and bonus loading.

(2) After the 31st day of December, 1950, no insurer shall, in respect of life insurance business transacted by him in India, spend as expenses of management in any calendar year an amount in excess of the prescribed

limits and in prescribing any such limits regard shall be had to the size and age of the insurer and the provision generally made for expenses of management in the premium rates of insurers:

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section, if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the Executive Committee of the Life Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(3) In respect of any statement mentioned in sub-section (1), the Controller may require that it shall be submitted to another actuary appointed by the insurer for the purpose and approved by the Controller, for certification by him, whether with or without modifications.

(4) Every insurer transacting life insurance business in India shall incorporate in the revenue account—

(a) a certificate signed by the chairman and two directors and by the principal officer of the insurer, and an auditor's certificate, certifying that all expenses of management in respect of life insurance business transacted by the insurer in India have been fully debited in the revenue account as expenses; and

(b) if the insurer is carrying on any other class of insurance business in addition to life insurance business an auditor's certificate certifying that all charges incurred in respect of his life insurance business and in respect of his business other than life insurance business have been fully debited in the respective revenue accounts.

*Explanation.—*In this section,—

(a) "calendar year" or "year" means, in relation to an insurer who is required to furnish returns in accordance with sub-section (2) of section 16, the period covered by the revenue account furnished by such insurer under clause (b) of that sub-section;

(b) "expenses of management" means all charges wherever incurred whether directly or indirectly, and includes—

(i) commission payments of all kinds,

(ii) any amount of expenses capitalised,

(iii) in the case of an insurer having his principal place of business outside India, a proper share of head office expenses which shall not be less than such percentage as may be prescribed of the total premiums (less reinsurances) received during the year in respect of life insurance business transacted by him in India,

but does not include in the case of an insurer having his principal place of business in India any share of head office expenses in respect of life insurance business transacted by him outside India.

40C. *Limitation of expenses of management in general insurance business.*—(1) After the 31st day of December, 1949, no insurer shall, in respect of any class of general insurance business transacted by him in India, spend in any calendar year as expenses of management including commission or remuneration for procuring business an amount in excess of the prescribed limits and in prescribing any such limits regard shall be had to the size and age of the insurer:

Provided that where an insurer has spent as such expenses in any year an amount in excess of the amount permissible under this sub-section, he shall not be deemed to have contravened the provisions of this section.

if the excess amount so spent is within such limits as may be fixed in respect of the year by the Controller after consultation with the Executive Committee of the General Insurance Council constituted under section 64F, by which the actual expenses incurred may exceed the expenses permissible under this sub-section.

(2) Every insurer as aforesaid shall incorporate in the revenue account a certificate signed by the chairman and two directors and by the principal officer of the insurer, and by an auditor certifying that all expenses of management wherever incurred, whether directly or indirectly, in respect of the business referred to in this section, have been fully debited in the revenue account as expenses.

Explanation.—In this section,—

(a) "calendar year" shall have the meaning assigned to it in section 40B;

(b) "expenses of management" means all charges, wherever incurred whether directly or indirectly, including commission payments of all kinds and, in the case of an insurer having his principal place of business outside India, a proper share of head office expenses, which shall not be less than such percentage as may be prescribed, of his gross premium income (that is to say, the premium income without taking into account premiums on reinsurance ceded or accepted) written direct in India during the year;

(c) "insurance business transacted in India" includes insurance business, wherever effected, relating to any property situate in India or to any vessel or aircraft registered in India."

32. Amendment of section 42, Act IV of 1938.—In section 42 of the said Act,—

(a) in sub-section (1), for the words "three rupees", the words "ten rupees" shall be substituted;

(b) in sub-section (2), the word "registered" shall be omitted;

(c) for sub-section (3), the following shall be substituted, namely:—

"(3) A licence issued under this section, after the commencement of the Insurance (Amendment) Act, 1950, shall remain in force for a period of three years only from the date of issue, but shall, if the applicant does not suffer from any of the disqualifications mentioned in items (b), (c) and (d) of sub-section (4) and the application for renewal of the licence reaches the issuing authority at least thirty days before the date on which the licence ceases to remain in force, be renewed for a period of three years at any one time on payment of the prescribed fee which shall not be more than ten rupees, and an additional fee of a prescribed amount, not exceeding three rupees by way of penalty, if the application for renewal of the licence does not reach the issuing authority at least thirty days before the date on which the licence ceases to remain in force."

(3A) No application for the renewal of a licence under this section shall be entertained if the application does not reach the issuing authority before the licence ceases to remain in force:

Provided that the Controller may, if satisfied that undue hardship would be caused otherwise, accept any application in contravention

of this sub-section on payment by the applicant of a penalty of thirty rupees."

33. Insertion of new sections 42A, 42B and 42C in Act IV of 1938.—After section 42 of the said Act, the following sections shall be inserted, namely:—

"42A. Registration of principal agents, chief agents and special agents.—

(1) The Controller or an officer authorised by him in this behalf shall, in the prescribed manner and on payment of the prescribed fee, which shall not be more than twenty-five rupees for a principal agent or a chief agent and ten rupees for a special agent, register any person who makes an application to him in the prescribed manner if,—

(a) in the case of an individual, he does not suffer from any of the disqualifications mentioned in sub-section (4) of section 42, or

(b) in the case of a company or firm, any of its directors or partners does not suffer from any of the said disqualifications,

and a certificate to act as a principal agent, chief agent or special agent, as the case may be, for the purpose of procuring insurance business shall be issued to him.

(2) A certificate issued under this section shall entitle the holder thereof to act as a principal agent, chief agent or special agent, as the case may be, for any insurer.

(3) A certificate issued under this section shall remain in force for a period of twelve months only from the date of issue, but shall, on application made in this behalf, be renewed from year to year on production of a certificate from the insurer concerned that the provisions of clauses 2 and 3 of Part A of the Sixth Schedule in the case of a principal agent, the provisions of clauses 2 and 4 of Part B of the said Schedule in the case of a chief agent, and the provisions of clauses 2 and 3 of Part C of the said Schedule in the case of a special agent, have been complied with, and on payment of the prescribed fee, which shall not be more than twenty-five rupees, in the case of a principal agent or a chief agent, and ten rupees in the case of a special agent, and an additional fee of the prescribed amount not exceeding five rupees by way of penalty, in cases where the application for renewal of the certificate does not reach the issuing authority before the date on which the certificate ceases to remain in force.

Provided that, where the applicant is an individual, he does not suffer from any of the disqualifications mentioned in clauses (b) to (d) of sub-section (4) of section 42, and, where the applicant is a company or a firm, any of its directors or partners does not suffer from any of the said disqualifications.

(4) Where it is found that the principal agent, chief agent or special agent being an individual is, or being a company or firm contains a director or partner who is, suffering from any of the disqualifications mentioned in sub-section (4) of section 42, without prejudice to any other penalty to which he may be liable, the Controller shall, and where a principal agent, chief agent or special agent has contravened any of the provisions of this Act may, cancel the certificate issued under this section to such principal agent, chief agent or special agent.

(5) The authority which issued any certificate under this section may issue a duplicate certificate to replace a certificate lost, destroyed or mutilated on payment of the prescribed fee, which shall not be more than two rupees.

(6) Any person who acts as a principal agent, chief agent or special agent, without holding a certificate issued under this section to act as such, shall be punishable with fine which may extend to five hundred rupees, and any insurer or any person acting on behalf of an insurer, who appoints as a principal agent, chief agent or special agent any person not entitled to act as such or transacts any insurance business in India through any such person, shall be punishable with fine which may extend to one thousand rupees.

(7) Where the person contravening sub-section (6) is a company or a firm, then, without prejudice to any other proceedings which may be taken against the company or firm, every director, manager, secretary or any other officer of the company, and every partner of the firm who is knowingly a party to such contravention shall be punishable with fine which may extend to five hundred rupees.

(8) The provisions of sub-sections (6) and (7) shall not take effect until the expiry of six months from the commencement of the Insurance (Amendment) Act, 1950.

42B. Regulation of employment of principal agents.—(1) No insurer shall, after the expiration of seven years from the commencement of the Insurance (Amendment) Act, 1950, appoint, or transact any Insurance business in India, through a principal agent.

(2) Every contract between an insurer and a principal agent shall be in writing and the terms contained in Part A of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(3) No insurer shall, after the commencement of the Insurance (Amendment) Act, 1950, appoint any person as a principal agent except in a presidency-town unless the appointment is by way of renewal of any contract subsisting at such commencement.

(4) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950, every principal agent shall file with the insurer concerned a full list of insurance agents employed by him indicating the terms of the contract between the principal agent and each of such insurance agents, and, if any principal agent fails to file such a list within the period specified, any commission payable to such principal agent on premiums received from the date of expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable.

(5) A certified copy of every contract as is referred to in sub-section (2) shall be furnished by the insurer to the Controller within thirty days of his entering into such contract and intimation of any change in any such contract shall be furnished by the insurer with full particulars thereof to the Controller within thirty days of the making of any such change.

(6) If the commission due to any insurance agent in respect of any general insurance business procured by such agent is not paid by the principal agent for any reason, the insurer may pay the insurance agent the commission so due and recover the amount so paid from the principal agent concerned.

(7) Every contract as is referred to in sub-section (2), subsisting at the commencement of the Insurance (Amendment) Act, 1950, shall, with respect to terms regarding remuneration, be deemed to have been so altered as to be in accordance with the provisions of sub-section (4) of section 40A.

(8) If any dispute arises as to whether a person is or was a principal agent, the matter shall be referred to the Controller, whose decision shall be final.

(9) Every insurer shall maintain a register in which the name and address of every principal agent appointed by him, the date of such appointment and the date, if any, on which the appointment ceased shall be entered.

42C. Regulation of employment of chief agents and special agents.—
(1) Every contract between an insurer carrying on life insurance business and a chief agent shall be in writing, and shall specify the area (not being less in extent than a district or the equivalent thereof) for which the chief agent is appointed, and the terms contained in Part B of the Sixth Schedule shall be deemed to be incorporated in, and form part of, every such contract.

(2) No chief agent shall, either directly or through insurance agents or special agents employed by or through him procure life insurance business for the insurer in any area outside the area for which he has been appointed or in any area for which another chief agent has been appointed or in any area in which the head office or any branch office of the insurer is operating, and neither the head office nor any branch office of the insurer shall operate in any area for which a chief agent has been appointed.

Provided that nothing in this sub-section shall be deemed to prohibit the head office of an insurer which had been operating at the commencement of the Insurance (Amendment) Act, 1950, for a period of not less than ten years before such commencement within the municipal limits of any town where the head office is situate, and a chief agent who, in pursuance of an agreement in writing, had been operating for a similar period within such limits, from continuing to operate within the said limits:

Provided further that nothing in this sub-section shall be deemed to prohibit an insurance agent from procuring life insurance business in or from any area and submitting the proposals direct to the principal office of the insurer in the States.

(3) Within sixty days of the commencement of the Insurance (Amendment) Act, 1950, every chief agent shall file with the insurer concerned a full list of the insurance agents employed by him, indicating the terms of the contract between the chief agent and each of such insurance agents and the business secured by each of such agents, and if any chief agent fails to file such a list within the period specified, any commission payable to such chief agent on premiums received from the date of the expiry of the said period of sixty days until the date of the filing of the said list shall, notwithstanding anything in any contract to the contrary, cease to be so payable.

(4) Every contract between an insurer carrying on life insurance business and a special agent, or between a chief agent of such insurer and a special agent, shall be in writing and the terms contained in Part C of the Sixth Schedule shall be deemed to be incorporated in, and form part, of every such contract:

Provided that the Controller may, in the case of a contract between a co-operative life insurance society as defined in clause (b) of sub-section (1) of section 95 and a co-operative society registered under the Indian Co-operative Societies Act, 1912 (II of 1912), or under any other law for the time being in force and acting as a special agent, alter, to such extent as he thinks fit, all or any of the said terms.

(5) A certified copy of every contract as is referred to in sub-section (1) or sub-section (4) shall be furnished by the insurer or the chief agent to the Controller within thirty days of his entering into such contract, and intimation of any change in any such contract shall be furnished by the insurer or the chief agent with full particulars thereof to the Controller within thirty days of the making of any such change.

(6) No such contract as is referred to in sub-section (1) or sub-section (4) shall be entered into or renewed for a period exceeding ten years at any one time, and, notwithstanding the terms of any contract to the contrary, no option to renew any such contract given to any of the parties shall be enforceable without the consent of the other.

(7) Every contract between an insurer and a person acting on behalf of such insurer who, before the commencement of the Insurance (Amendment) Act, 1950, has been employing insurance agents for the purpose of life insurance business, which is subsisting on such commencement, shall terminate after the expiration of ten years from such commencement, if it does not terminate earlier:

Provided that every such contract shall be modified by the parties before the 1st day of January, 1951, to bring it into conformity with this Act, and any such modification shall—

(i) as respects remuneration, whether in respect of business already procured or in respect of business to be procured thereafter, be such as may be mutually agreed upon between the parties, subject, in the case of remuneration payable on business procured before such commencement, to a maximum of an over-riding commission of two and a half per cent. plus a further commission not exceeding three and three-quarters per cent. on premiums in respect of which no commission is payable to any insurance agent;

(ii) be deemed to include all the terms specified in Part B or Part C of the Sixth Schedule, as the case may be:

Provided further that, in the event of any dispute as to the terms of any fresh contract, the matter shall be referred to arbitration.

(8) Any such contract as is referred to in sub-section (7) which was subsisting on the 1st day of January, 1949, but has terminated or has been terminated before the commencement of the Insurance (Amendment) Act, 1950, shall be subject to the maximum limits specified in clause (i) of the proviso to sub-section (7) as respects remuneration, if any, payable on business procured before the termination of the contract.

(9) Nothing in this section shall be deemed to prevent any special agent from receiving any renewal commission on policies effected through him as an insurance agent at any time before his appointment as such special agent.

(10) If any dispute arises as to whether a person is or was a chief agent or a special agent for the purposes of this Act, the matter shall be referred to the Controller whose decision shall be final.

(11) Every insurer shall maintain a register in which the name and address of every chief agent appointed by him, the date on which the appointment was made and the date, if any, on which the appointment ceased shall be entered, and a separate register in which similar

particulars relating to every special agent shall be entered, and every chief agent shall maintain a register in which similar particulars relating to every special agent appointed by him shall be entered."

34. Substitution of new section for section 44, Act IV of 1938.—For section 44 of the said Act, the following section shall be substituted, namely:—

"44. Prohibition of cessation of payments of commission.—(1) Notwithstanding anything to the contrary contained in any contract between any person and an insurance agent providing for the forfeiture or stoppage of payment of renewal commission to such insurance agent, no such person shall, in respect of life insurance business transacted in India, refuse payment to an insurance agent of commission due to him on renewal premium under the agreement by reason only of the termination of his agreement, except for fraud:

Provided that—

(a) such agent ceases to act for the insurer concerned after the Central Government has notified in the Official Gazette that it is satisfied that the circumstances in which the said insurer is placed are such as to justify the agent's ceasing to act for him; or

(b) such agent has served the insurer continually and exclusively in respect of life insurance business for at least five years and policies assuring a total sum of not less than fifty thousand rupees effected through him for the insurer were in force on a date one year before his ceasing to act as such agent for the insurer, and that the commission on renewal premiums due to him does not exceed four per cent. in any case; or

(c) such agent has served the insurer continually and exclusively for at least ten years and after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other person.

Explanation.—For the purposes of this sub-section, service of an insurance agent under a chief agent of the insurer, whether before or after the commencement of the Insurance (Amendment) Act, 1950, shall be deemed to be service under the insurer.

(2) Any commission payable to an insurance agent under the provisions of clauses (b) and (c) of the proviso to sub-section (1) shall, notwithstanding the death of the agent, continue to be payable to his heirs for so long a period as such commission would have been payable had such insurance agent been alive.

35. Insertion of new section 44A in Act IV of 1938.—After section 44 of the said Act and before the heading "Special Provisions of Law", the following section shall be inserted, namely:—

"44A. Power to call for information.—For the purposes of ensuring compliance with the provisions of sections 40A, 40B, 40C, 42B and 42C the Controller may by notice—

(a) require from an insurer, principal agent, chief agent or special agent such information, certified if so required by an auditor or actuary, as he may consider necessary;

(b) require an insurer, principal agent, chief agent or special agent to submit, for his examination at the principal place of business of the insurer in the States, any book of account, register or other document, or to supply any statement which may be specified in the notice;

(c) examine any officer of an insurer or a principal agent, chief agent or special agent on oath, in relation to any such information, book, register, document or statement and administer the oath accordingly;

and an insurer, principal agent, chief agent or special agent shall comply with any such requirement within such time as may be specified in the notice."

36. Amendment of section 47, Act IV of 1938.—In sub-section (1) of section 7 of the said Act, the words "before the expiry of nine months from the date of the maturing of the policy or where the circumstances are such that the insurer cannot be immediately aware of such maturing, from the date on which notice of such maturing is given to the insurer" shall be omitted.

37. Insertion of new section 47A in Act IV of 1938.—After section 47 of the said Act, the following section shall be inserted, namely:—

"47A. Claims on small life insurance policies.—(1) In the event of any dispute relating to the settlement of a claim on a policy of life insurance assuring a sum not exceeding two thousand rupees (exclusive of any profit or bonus not being a guaranteed profit or bonus) issued by an insurer in respect of insurance business transacted in India, arising between a claimant under the policy and the insurer who issued the policy or has otherwise assumed liability in respect thereof, the dispute may at the option of the claimant be referred to the Controller for decision, and the Controller may, after giving an opportunity to the parties to be heard and after making such further inquiries as he may think fit, decide the matter.

(2) The decision of the Controller under this sub-section shall be final and shall not be called in question in any Court, and may be executed by the Court which would have been competent to decide the dispute if it had not been referred to the Controller as if it were a decree passed by that Court.

(3) There shall be charged and collected in respect of the duties of the Controller under this section such fees whether by way of percentage or otherwise as may be prescribed."

38. Amendment of section 48, Act IV of 1938.—In section 48 of the said

(i) in sub-section (1), after the words "directors of the company" the words "the number to be elected not being less than two in any case" shall be inserted;

(ii) for the second proviso to sub-section (2A), the following proviso shall be substituted, namely:—

"Provided further that the Controller may exempt any director of a subsidiary company of the insurer from any disqualification imposed by this sub-section.";

(iii) in clause (a) of sub-section (3), for the words "provisions of this sub-section" the words "provisions of this section" shall be substituted.

39. Amendment of section 48A, Act IV of 1938.—In section 48A of the said Act, for the words "no person acting on behalf of an insurer who, for the purpose of life insurance business employs insurance agents", the words "no chief agent or special agent" shall be substituted.

40. Insertion of new sections 48B and 48C in Act IV of 1938.—After section 48A of the said Act the following sections shall be inserted, namely:—

"48B. Further provision regarding directors.—(1) An insurer specified in sub-clause (b) of clause (9) of section 2 and carrying on life insurance business shall not have a common director with another such insurer.

(2) The Central Government may, for such period, to such extent and subject to such conditions as it may specify, exempt from the operation of this section—

(a) any insurer, who is a subsidiary company of another insurer, or

(b) two or more insurers, for the purpose of facilitating their amalgamation or the transfer of business of one insurer to the other.

48C. Appointment of additional directors.—The Central Government may, in the case of an insurer specified in sub-clause (b) of clause (9) of section 2, appoint for such period and subject to such terms and conditions as it thinks fit, not more than two persons to be directors in addition to the directors already existing and the insurer shall pay to such additional director or directors the same fees and allowances as are payable to the other directors."

41. Amendment of section 49, Act IV of 1938.—*(1) Section 49 of the said Act shall be renumbered as sub-section (1) thereof, and after the proviso to that sub-section, as so renumbered, the following further proviso shall be added, namely:—*

"Provided further that the share of any such surplus allocated to or reserved for the shareholders (including any amount for the payment of dividends guaranteed to them, whether by way of first charge or otherwise) shall not exceed seven and a half per cent. of such surplus."

(2) After sub-section (1), as so renumbered, the following sub-section shall be inserted, namely:—

"(2) For the purposes of sub-section (1), the actual amount of income-tax deducted at source during the period following the date as at which the last preceding valuation was made and preceding the date as at which the valuation in question is made may be added to such surplus after deducting an estimated amount for income-tax on such surplus, such addition and deduction being shown in paragraph 8(1) of the abstract prepared in accordance with Part II of the Fourth Schedule to this Act."

42. Insertion of new sections 52A to 52G in Act IV of 1938.—After section 52 of the said Act, the following heading and sections shall be inserted, namely:—

"MANAGEMENT BY ADMINISTRATOR

52A. When Administrator for management of insurance business may be appointed.—(1) If at any time the Controller has reason to believe that an insurer carrying on life insurance business is acting in a manner likely to be prejudicial to the interests of holders of life insurance policies, he may, after giving such opportunity to the insurer to be heard as he thinks fit, make a report thereon to the Central Government.

(2) The Central Government, if it is of opinion after considering the report that it is necessary or proper to do so, may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Controller.

(3) The Administrator shall receive such remuneration as the Central Government may direct and the Central Government may at any time cancel the appointment and appoint some other person as Administrator.

(4) The management of the business of the insurer shall as on and after the date of appointment of the Administrator vest in such Administrator, but except with the leave of the Controller the Administrator shall not issue any further policies.

(5) As on and after the date of appointment of the Administrator any person vested with any such management immediately prior to that date shall be divested of that management.

(6) The Controller may issue such directions to the Administrator as to his powers and duties as he deems desirable in the circumstances of the case, and the Administrator may apply to the Controller at any time for instructions as to the manner in which he shall conduct the management of the business of the insurer or in relation to any matter arising in the course of such management.

52B. Powers and duties of the Administrator.—(1) The Administrator shall conduct the management of the business of the insurer with the greatest economy compatible with efficiency and shall, as soon as may be possible, file with the Controller a report stating which of the following courses is in the circumstances most advantageous to the general interests of the holders of life insurance policies, namely:—

(a) the transfer of the business of the insurer to some other insurer;

(b) the carrying on of its business by the insurer (whether with the policies of the business continued for the original sum insured with the addition of bonuses that attach to the policies or for reduced amounts);

(c) the winding up of the insurer; or

(d) such other course as he deems advisable.

(2) On the filing of the report with the Controller, the Controller may take such action as he thinks fit for promoting the interests of the holders of life insurance policies in general.

(3) Any order passed by the Controller under sub section (2) shall be binding on all persons concerned, and shall have effect notwithstanding anything in the memorandum or articles of association of the insurer, of a company.

52C. Cancellation of contracts and agreements.—The Administrator may, at any time during the continuance of his appointment with respect to an insurer and after giving an opportunity to the persons concerned to be heard, cancel or vary (either unconditionally or subject to such conditions as he thinks fit to impose) any contract or agreement (other than a policy) between the insurer and any other person which the Administrator is satisfied is prejudicial to the interests of holders of life insurance policies.

52D. Termination of appointment of Administrator.—If at any time, on a report made by the Controller in this behalf, it appears to the Central Government that the purpose of the order appointing the Administrator has been fulfilled or that for any reason it is undesirable that the order of appointment should remain in force, the Central Government may cancel the order and thereupon the Administrator shall be divested of the management of the insurance business which shall, unless otherwise directed by the Central Government, again vest in the person in whom it was vested immediately prior to the date of appointment of the Administrator.

52E. *Finality of decision appointing Administrator.*—Any order or decision of the Central Government made in pursuance of section 52A or section 52D shall be final and shall not be called in question in any Court.

52F. *Penalty for withholding documents or property from Administrator.*—If any director or officer of the insurer or any other person fails to deliver to the Administrator any books of account, registers or any other documents in his custody relating to the business of the insurer the management of which has vested in the Administrator, or retains any property of such insurer, he shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

52G. *Protection of action taken under sections 52A to 52D.*—
(1) No suit, prosecution or other legal proceeding shall lie against an Administrator for anything which is in good faith done or intended to be done in pursuance of sections 52A to 52G inclusive.

(2) No suit or other legal proceeding shall lie against the Central Government or the Controller for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under section 52A, section 52B, or section 52D.”

43. Amendment of section 55, Act IV of 1938.—In section 55 of the said Act, for the words “Sixth Schedule”, wherever they occur, the words “Seventh Schedule” shall be substituted.

44. Amendment of section 64, Act IV of 1938.—To section 64 of the said Act, the following words shall be added, namely:—

“and shall furnish to the Controller on or before the last day of January in every calendar year a certificate from an auditor to the effect that the said books of account, register and documents are being kept as required at the principal office of the insurer in India.”

45. Insertion of new sections 64A to 64T in Act IV of 1938.—After section 64 and before Part III, the following Part and sections shall be inserted, namely:—

“PART IIA

INSURANCE ASSOCIATION OF INDIA, COUNCILS OF THE ASSOCIATION AND COMMITTEES THEREOF

64A. Incorporation of the Insurance Association of India.—(1) All insurers carrying on insurance business in the States at the commencement of the Insurance (Amendment) Act, 1950, all insurers who may after such commencement begin to carry on insurance business in the States, and, if the Central Government, by notification in the Official Gazette, so declares, all provident societies carrying on insurance business in the States on the date of such notification and all provident societies which may begin to carry on insurance business in the States after such date are hereby constituted a body corporate by the name of the Insurance Association of India.

(2) All insurers and provident societies incorporated or domiciled in the States shall be known as members of the Insurance Association of India, and all insurers and provident societies incorporated or domiciled elsewhere than in the States shall be known as associate members of that Association.

(3) The Insurance Association of India shall have perpetual succession and a common seal and shall have power to acquire, hold and dispose of all property, both movable and immovable, and shall by the said name sue and be sued.

64B. *Entry of names of members in the register.*—(1) The Controller shall take or cause to be taken through such agency as he thinks fit such steps as may be necessary to have the names of all insurers and provident societies, who or which are entitled to have their names entered in the register of members and associate members of the Insurance Association of India maintained for this purpose entered therein.

(2) Where any insurer or provident society has ceased to carry on business as such, the Controller shall cause such steps to be taken as may be necessary to have the name of such insurer or provident society, as the case may be, removed from the register.

64C. *Councils of the Insurance Association of India.*—There shall be two Councils of the Insurance Association of India, namely:—

(a) the Life Insurance Council consisting of all the members and associate members of the Association who carry on life insurance business in the States, and

(b) the general Insurance Council consisting of all the members and associate members of the Association who carry on general insurance business in the States.

64D. *Authority of Members of Association to act through agents.*—It shall be lawful for any member of the Life Insurance Council or the General Insurance Council to authorise any individual, whether an officer of the insurer or not, to act as the representative of such member at any meeting of the Council concerned or to stand as a candidate for any election held by that Council.

64E. *Authorities of the Life Insurance Council and the General Insurance Council.*—The authorities of the Life Insurance Council and the General Insurance Council shall be the Executive Committees, the Tariff Committee and the other Committee thereof constituted in the manner provided in this Part.

64F. *Executive Committees of the Life Insurance Council and the General Insurance Council.*—(1) The Executive Committee of the Life Insurance Council shall consist of the following persons, namely:—

(a) two officials nominated by the Central Government, one as the Chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on life insurance business elected in their individual capacity by the said members in such manner, from such groups of members and from such areas as may be specified by the Central Government;

(c) one non-official not connected with any insurance business, nominated by the Central Government; and

(d) five persons connected with life insurance business, nominated by the Central Government for the purpose of representing such groups of insurers carrying on life insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the Life Insurance Council or for any other purpose.

(2) The Executive Committee of the General Insurance Council shall consist of the following persons, namely:—

(a) two officials nominated by the Central Government, one as the Chairman and the other as a member;

(b) eight representatives of members of the Insurance Association of India carrying on general insurance business elected in their individual capacity by the said members in such manner, from such groups and from such areas as may be specified by the Central Government;

(c) one non-official not connected with any insurance business, nominated by the Central Government; and

(d) five persons connected with general insurance business, nominated by the Central Government for the purpose of representing such groups of insurers carrying on general insurance business or such areas as have not been able to secure adequate representation on the Executive Committee of the General Insurance Council or for any other purpose.

(3) If any body of persons specified in sub-sections (1) and (2) fails to elect any of the members of the Executive Committees of the Life Insurance Council or the General Insurance Council, the Central Government may nominate any person to fill the vacancy, and any person so nominated shall be deemed to be a member of the Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, as if he had been duly elected thereto.

(4) No official nominated by the Central Government shall be entitled, whether as chairman or as a member, to vote in respect of any matter coming up before any meeting of the Executive Committee of the Life Insurance Council or the Executive Committee of the General Insurance Council, as the case may be, and subject thereto each of the said Executive Committee may, with the approval of the Central Government, make bye-laws for the transaction of any business at any meeting of the said Committee, and any such bye-law may provide that any member of the Committee who is interested in any matter for the time being before that Committee may not be present at or take part in any meeting thereof.

(5) The Life Insurance Council or the General Insurance Council may form such other committees consisting of such persons as it may think fit to discharge such functions as may be delegated thereto:

Provided that any action taken by any of the said Councils under this sub-section shall be with the previous consent of the Central Government, and nothing in this sub-section shall derogate from any of the powers vested in the Executive Committees.

(6) The Secretary of the Executive Committee of the Life Insurance Council and of the Executive Committee of the General Insurance Council shall in each case be an official nominated by the Central Government.

64G. Resignation and filling up of casual vacancies.—(1) Any member of the Executive Committee of the Life Insurance Council or of the General Insurance Council may resign his membership of the Committee by notice in writing addressed to the Chairman of the Committee to that effect.

(2) Casual vacancies in the Executive Committee of the Life Insurance Council or of the General Insurance Council, whether caused by resignation, death or otherwise, shall be filled by nomination by the Central Government, and any person so nominated to fill the vacancy shall hold office until the dissolution of the Committee to which he has been nominated.

(3) No act of the Executive Committee of the Life Insurance Council or of the General Insurance Council shall be called in question on the

ground merely of the existence of any vacancy in, or defect in the constitution of, the Committee concerned.

64H. *Duration and dissolution of Executive Committee.*—(1) The duration of the Executive Committee of the Life Insurance Council or the General Insurance Council shall be three years from the date of its first meeting on the expiry of which it shall stand dissolved and a new Executive Committee constituted.

(2) Notwithstanding the dissolution of the Executive Committee of the Life Insurance Council or the General Insurance Council, the outgoing members thereof shall continue to hold office and discharge such administrative and other duties as may be prescribed until such time as a new Executive Committee of the Life Insurance Council or the General Insurance Council, as the case may be, shall have been constituted.

64I. *Power of Executive Committee of Life Insurance Council to hold examinations for insurance agents.*—The Life Insurance Council may, with the approval of the Central Government, authorise its Executive Committee to hold examinations for individuals wishing to qualify themselves as insurance agents for the purpose of procuring life insurance business, and, if the Central Government, by notification in the Official Gazette, so declares, then, notwithstanding anything contained in section 42, only individuals who have passed any such examination shall be eligible to apply for a licence under section 42:

Provided that nothing in this sub-section shall affect the right of any individual, who has been licensed to act as an insurance agent under section 42 before the date of such notification, to act as such, or to have his licence renewed from time to time.

64J. *Functions of Executive Committee of Life Insurance Council.*—(1) The functions of the Executive Committee of the Life Insurance Council shall be—

(a) to aid, advise and assist insurers carrying on life insurance business in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of life insurance policies;

(b) to render advice to the Controller in the matter of controlling the expenses of insurers in respect of their life insurance business in India;

(c) to bring to the notice of the Controller the case of any insurer acting in a manner prejudicial to the interests of holders of life insurance policies;

(d) to act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as, with the approval of the Central Government, may be notified by the Life Insurance Council in the Gazette of India.

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the Life Insurance Council may collect such sums of money, whether by way of fees or otherwise, as may be prescribed from all members and associate members of the Insurance Association of India who carry on life insurance business.

64K. *Executive Committee of Life Insurance Council may advise in controlling expenses.*—(1) It shall be the duty of the Executive Committee of the Life Insurance Council to meet at least once before the 31st day of March every year to advise the Controller in fixing under the proviso to sub-section (2) of section 40B the limits by which the actual expenses

incurred by an insurer carrying on life insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Controller shall have due regard to the conditions obtaining in life insurance business generally during that year, and he may fix different limits for different groups of insurers.

(2) Where an insurer is guilty of contravening the provisions of section 40B with respect to the expenses of management, the Controller may, after giving the insurer an opportunity of being heard, administer a warning to the insurer.

(3) Where within a period of seven years two warnings have been given to an insurer under sub-section (2) and they have been disregarded by him, the Controller may cause an investigation and valuation, as at such date as the Controller may specify, to be made at the expense of the insurer by an actuary appointed by the insurer for this purpose and approved by the Controller, and the insurer shall place at the disposal of the said actuary all the materials required by him for the purpose of such investigation and valuation, within such period, not being less than three months, as the Controller may specify.

(4) The provisions of sub-sections (1) and (4) of section 13 and of sub-sections (1) and (2) of section 15, or, as the case may be, of sub-section (2) of section 16 shall apply in relation to an investigation and valuation under this section:

Provided that the abstract and statement prepared as the result of such investigation and valuation shall be furnished by such date as the Controller may specify.

(5) There shall be appended to every such abstract a statement signed by the actuary giving such information as may be prescribed.

(6) On receipt of the abstract and statement furnished in accordance with sub-section (4), the Controller may take such action as may be prescribed.

64L. Functions of Executive Committee of General Insurance Council.

—(1) The functions of the Executive Committee of the General Insurance Council shall be—

(a) to aid and advise insurers, carrying on general insurance business, in the matter of setting up standards of conduct and sound practice and in the matter of rendering efficient service to holders of policies of general insurance;

(b) to render advice to the Controller in the matter of controlling the expenses of such insurers carrying on business in India in the matter of commission and other expenses;

(c) to bring to the notice of the Controller the case of any such insurer acting in a manner prejudicial to the interests of holders of general insurance policies;

(d) to act in any matter incidental or ancillary to any of the matters specified in clauses (a) to (c) as with the approval of the Central Government may be notified by the General Insurance Council in the Gazette of India

(2) For the purpose of enabling it effectively to discharge its functions, the Executive Committee of the General Insurance Council may collect such fees as may be prescribed from all insurers carrying on general insurance business.

64M. Executive Committee of General Insurance Council may advise in controlling expenses.—(1) It shall be the duty of the Executive Committee of the General Insurance Council to meet at least once before the 81st day of March every year to advise the Controller in fixing under the proviso to sub-section (1) of section 40C the limits by which the actual expenses of management incurred by an insurer carrying on general insurance business in respect of such business in the preceding year may exceed the limits prescribed under that sub-section, and in fixing any such limits the Controller shall have due regard to the conditions obtaining in general insurance business in the preceding year, and he may fix different limits for different groups of insurers.

(2) Where an insurer is guilty of contravening the provisions of section 40C with respect to the expenses of management the Controller may, after giving the insurer an opportunity of being heard, administer a warning to the insurer.

(3) Where in any case two warnings given to an insurer under sub-section (2) have been disregarded by him, the Controller may take such action against the insurer as may be prescribed.

64N. Power of the Executive Committees to act together in certain cases.—The Central Government may prescribe the circumstances in which, the manner in which, and the conditions subject to which, the Executive Committee of the Life Insurance Council and the Executive Committee of the General Insurance Council may hold joint meetings for the purpose of dealing with any matter of common interest to both Committees, and it shall be lawful for the two Committees at any such joint meeting to delegate any matter under consideration for the determination of a sub-committee appointed for this purpose from amongst the members of the two Committees.

64O. Power of General Insurance Council to regulate rates of insurance, etc.—(1) The General Insurance Council may, by regulations made in this behalf and approved by the Central Government, control and regulate the rates, advantages, terms and conditions that may be offered by its members and associate members in respect of general insurance business, and all such regulations shall be binding on all its members.

(2) Any regulations made under sub-section (1) may delegate to a Tariff Committee, appointed for such period and consisting of such persons as may be specified in such regulations, any power of control and regulation vested in the General Insurance Council.

(3) Where an insurer is guilty of contravening any regulation made under sub-section (1) by which he is bound, the Tariff Committee, if any, appointed under sub-section (2) may take such disciplinary action against him as may be prescribed.

(4) The Central Government may prescribe the cases in which an appeal shall lie in respect of any action taken under sub-section (3), and any such appeal shall be preferred to the Central Government within thirty days of the date on which such action was taken.

(5) The General Insurance Council shall meet at least once a year to review the work done by the Tariff Committee appointed under sub-section (2).

(6) For the purpose of enabling the Tariff Committee to effectively discharge its functions under this section, the General Insurance Council may, by regulations made in this behalf and approved by the Central Government, fix the amount of fees payable by insurers carrying on general

insurance business, and the Tariff Committee appointed under sub-section (2) may collect such fees either directly or through Regional Councils constituted as hereinafter provided.

Explanation.—For the purposes of section 64O, section 64P and section 64Q, the Central Government may, by notification in the Official Gazette, specify that any insurer or class of insurers, shall not be deemed to be included amongst insurers carrying on general insurance business, and any insurer so specified shall not take part in any meeting of the General Insurance Council in which any discussion of any matter dealt with in the said sections takes place.

64P. Regional Councils.—(1) The General Insurance Council may constitute such Regional Councils as and when it deems fit for one or more of the prescribed regions.

(2) Each Regional Council shall consist of seven persons elected by such groups of insurers carrying on general insurance business in the region as may be prescribed.

64Q. Functions of the Regional Councils.—(1) The Regional Councils shall perform such functions as may be delegated to them by the General Insurance Council.

(2) For the purpose of enabling it effectively to discharge its duties, any Regional Council may in the prescribed manner constitute such Committees thereof as it may think fit, whether consisting of members of the Regional Council or otherwise.

(3) Where in the exercise of any functions delegated to it under this section, any Regional Council or any Committee thereof restrains a principal agent or an insurance agent from procuring or causing to be procured general insurance business from any area, any such principal agent or insurance agent may appeal to the Central Government within such time as may be prescribed and the Central Government may pass such orders thereon as it thinks fit.

64R. General powers of Life Insurance Council and General Insurance Council.—(1) For the efficient performance of its duties, the Life Insurance Council or the General Insurance Council, as the case may be, may—

(a) appoint such officers and servants as may be necessary and fix the conditions of their service;

(b) determine the manner in which any prescribed fee may be collected;

(c) keep and maintain up to date a copy of the list of all insurers who are members or associate members of the Insurance Association of India;

(d) with the previous approval of the Central Government, make regulations for—

(i) the holding of elections other than the first elections;

(ii) the summoning and holding of meetings, the conduct of business thereat and the number of persons necessary to form a quorum;

(iii) the submission by insurers to the Executive Committee of the Life Insurance Council, or the General Insurance Council of such statements or information as may be required of them and the submission of copies thereof by the insurers to the Controller;

(iv) the levy and collection of any fees;

(v) the regulation of any other matter which may be necessary for the purpose of enabling it to carry out its duties under this Act.

(2) The Life Insurance Council or the General Insurance Council may authorise the Executive Committee concerned or the Tariff Committee appointed under section 640 to exercise any of the powers conferred on the Life Insurance Council or the General Insurance Council, as the case may be, under clause (a), clause (b) or clause (c) of sub-section (1).

64S Power of Central Government to remove difficulties.—The Central Government may exercise such powers as may be necessary for bringing the Life Insurance Council, the General Insurance Council or the Executive Committee of any of the said Councils, as the case may be, into effective existence for the purposes of this Part, and any such powers shall include—

(a) the power to hold, in such manner as may be directed by the Central Government, the first elections to the Executive Committees of the Life Insurance Council and the General Insurance Council;

(b) where a notification under sub-section (1) of section 64A has been issued declaring provident societies to be members of the Insurance Association of India, the power to associate provident societies effectively in the exercise of all powers and the discharge of all functions of the Life Insurance Council and the Executive Committee thereof;

(c) the power to make the provisions of section 40B applicable to the provident societies specified in clause (b) in the same manner as they apply to insurers.

64T. Power to exempt.—The Central Government may, subject to such conditions and restrictions as it may think fit to impose, exempt any insurer specified in sub-clause (c) of clause (9) of section 2 from the operation of all or any of the provisions of this Part."

46. Amendment of section 65, Act IV of 1938.—In sub-section (1) of section 65 of the said Act, for the words "nine hundred" the words "one thousand" shall be substituted.

47. Insertion of new section 65A in Act IV of 1938.—After section 65 of the said Act, the following section shall be inserted, namely:—

"65A. Prohibition of transaction of insurance business by provident societies other than public companies or co-operative societies.—No person shall, after the commencement of the Insurance (Amendment) Act, 1950, begin to carry on in the States any business specified in sub-section (1) of section 65, and no provident society carrying on any such business in the States shall, after the expiry of one year from such commencement, continue to carry on any such business, unless he or it is—

(a) a public company, or

(b) a society registered under the Co-operative Societies Act, 1912 (11 of 1912) or under any other law for the time being in force in any State relating to co-operative societies, or

(c) a body corporate incorporated under the law of any country outside the States not being of the nature of a private company."

48. Omission of section 68, Act IV of 1938.—Section 68 of the said Act shall be omitted.

49. Amendment of section 70, Act IV of 1938.—In section 70 of the said Act,—

(1) in sub-section (3), for the figures “67” the figures and letter “65A, 67” shall be substituted;

(2) in sub-section (4).—

(i) at the end of sub-clause (ii) of clause (a), the word “or” shall be inserted.

(ii) clause (b) shall be omitted; and

(iii) after clause (a) of the second proviso, the following clause shall be inserted, namely:—

“(aa) cancel the registration of a provident society if any deposit required by section 73, has not been made, or”.

50. Amendment of section 71, Act IV of 1938.—In section 71 of the said Act,—

(i) for the words, figures and letter “sections 20, 32, 46 and 58A” the words, figures, brackets and letters “sub-sections (2) and (3) of section 10, section 20, sub-section (1) of section 27, sections 27A, 28, 29, 81A, 81B, 82, 46 and 58A” shall be substituted;

(ii) after the words “members of a provident society” the words and figures “and references to section 7 or section 98 shall be construed as references to section 78” shall be inserted.

51. Amendment of section 82, Act IV of 1938.—To sub-section (2) of section 82 of the said Act, the following proviso shall be added, namely:—

“Provided that the Central Government may in any case extend the time allowed by this sub-section for the furnishing of such return by a period not exceeding three months.”

52. Amendment of section 85, Act IV of 1938.—In section 85 of the said Act, sub-section (1) shall be omitted.

53. Amendment of section 91, Act IV of 1938.—In sub-section (1) of section 91 of the said Act,—

(i) the word “and” at the end of clause (f) shall be omitted; and

(ii) after clause (g) the following clause shall be inserted, namely:—

“(h) to sell the immovable and movable property of the society by public auction or private contract, with power to transfer the whole thereof to any person or society or to sell the same in parcels.”

54. Amendment of section 92, Act IV of 1938.—In section 92 of the said Act,—

(1) in sub-section (4).—

(i) for the words “the Superintendent of Insurance shall appoint a suitable person”, the words “the Controller may, if he thinks fit, appoint a suitable person” shall be substituted; and

(ii) for the words “and if so desired, shall also appoint a committee of inspection”, the words “and if he considers it desirable, may also appoint a committee of inspection” shall be substituted;

(2) in sub-section (7), after the words “forwarded by the liquidator” the words “within one week after the meeting” shall be inserted.

55. Amendment of section 94, Act IV of 1938.—In section 94 of the said Act, sub-section (2) shall be omitted.

56. Amendment of section 98A, Act IV of 1938.—In section 98A of the said Act, the words, figures and brackets “so however that in such application the references in the second proviso to sub-section (1) of the said section to the commencement of this Act shall be construed as references to the commencement of the Insurance (Amendment) Act, 1946” shall be omitted.

57. Amendment of section 100, Act IV of 1938.—In section 100 of the said Act, for the words “publish such notices or documents” the words “publish such notice together with a summary in the prescribed form of the balance-sheet and revenue account” shall be substituted.

58. Amendment of section 102, Act IV of 1938.—In section 102 of the said Act,—

(i) for sub-section (1), the following shall be substituted, namely:—

“(1) Except as otherwise provided in this Act, any insurer, principal agent, chief agent, or special agent, who makes default in complying with, or acts in contravention of, any requirement of this Act, or of any rule or order made thereunder and, where the insurer is a company, any director, managing agent, manager or other officer of the company, or where the insurer is a firm, any partner of the firm who is knowingly a party to the default or contravention, shall be punishable with fine which may extend to one thousand rupees, and in the case of a continuing default or contravention with an additional fine which may extend to five hundred rupees for every day during which the default or contravention continues”;

(ii) in sub-section (2), for the words “any of the requirements of this Act” the words “any requirement of this Act or of any rule or order made thereunder” shall be substituted.

59. Insertion of new section 110C in Act IV of 1938.—After section 110B of the said Act, the following section shall be inserted, namely:—

“110C. *Power to call for information.*—(1) The Controller may, by notice in writing, require any insurer to supply him with any information relating to his insurance business, and the insurer shall comply with such requirement within such period after receipt of the notice as may be specified therein.

(2) Any information supplied under this section shall be certified by a principal officer of the insurer and if the notice so requires also by an auditor.”

60. Amendment of section 116, Act IV of 1938.—In sub-section (1) of section 116 of the said Act,—

(i) for the words “a Part B State” the words “any country or State outside the States” shall be substituted; and

(ii) the proviso shall be omitted.

61. Amendment of section 116A, Act IV of 1938.—To the proviso to section 116A of the said Act, after the words and figures “of section 28”, the words, figures, brackets and letters “or section 28A, or the statements referred to in sub-section (2) of section 31B or section 40B” shall be added.

62. Amendment of section 118, Act IV of 1938.—In section 118 of the said Act—

(i) for the words “by the Central or by a State Government”, the words “by the Central Government” shall be substituted;

(ii) at the end of clause (b), the word “or” shall be inserted and after that clause, the following shall be added, namely:—

“(c) any approved superannuation fund as defined in clause (a) of section 58N of the Indian Income-tax Act, 1922 (XI of 1922), or, if the Central Government so orders in any case, and to such extent or subject to such conditions or modifications as are specified in such order, to any insurance business carried on by a State Government or to any insurance company more than fifty-one per cent of whose shares is held by a State Government.”

63. Amendment of the First Schedule, Act IV of 1938.—In the First Schedule to the said Act,—

(i) in Part I, in clause (c) of regulation 7, for the words “a certificate signed by” and the words “parts of the assets”, the words “where the balance sheet relates either wholly or in part to life insurance business, a certificate signed by” and the words “part of the assets” shall respectively be substituted;

(ii) in Form A, in the first column, for the item “Life Insurance Fund” the following shall be substituted, namely:—

“Life Insurance Fund—

(i) Business in India.

(ii) Business outside India.”

64. Amendment of the Third Schedule, Act IV of 1938.—In the Third Schedule to the said Act,—

(1) in Part I, after regulation 7, the following regulation shall be inserted, namely:—

“7A. In addition to the revenue account, information shall also be supplied of the gross claims payable directly by the insurer in India (that is to say, the claims without taking into account claims on reinsurance ceded or accepted) separately for fire, marine and miscellaneous insurance business and the provisions of sections 20 and 116A shall not apply to any information so supplied.”;

(2) in Part II, in Form F,—

(a) in the first column, for the item “Commission” the following items shall be substituted, namely:—

“Commission on direct Business

Commission on Reinsurances accepted.”;

(b) in the third column, before the item “Other Income (to be specified)”, the following item shall be inserted, namely:—

“Commission on Reinsurances ceded.....”

65. Insertion of new Schedule in Act IV of 1938.—In the said Act, the “Sixth Schedule” shall be renumbered as the “Seventh Schedule”, and before that Schedule as so renumbered, the following Schedule shall be inserted, namely:—

“THE SIXTH SCHEDULE

PART A

[See section 42B(1)]

Term deemed to be included in every contract between an insurer carrying on general insurance business and a principal agent

1. All payments of commission to insurance agents shall be made by the principal agent on behalf of the insurer.

2. The principal agent shall procure or cause to be procured through insurance agents such an amount of general insurance business of any class for the procurement of which he has been appointed, as will yield a gross premium income of not less than twenty thousand rupees in each calendar year.

3. In the event of the principal agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer—

(i) one-quarter of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is fire or miscellaneous insurance business, or

(ii) one-third of the total remuneration payable to him by the insurer for that year, if the class of business for the procurement of which he has been appointed is marine insurance business.

4. In the event of the principal agent failing to comply with the requirements of clause 2 in any two successive calendar years, the contract shall, without prejudice to the provisions of clause 8, terminate on the 31st day of March immediately following the second calendar year.

5. Except in cases where the business relates to any property under his immediate control, a principal agent shall not by himself procure any class of general insurance business without utilising the services of an insurance agent.

PART B

[See section 42C (1)]

Terms deemed to be included in every contract between an insurer carrying on life insurance business and a chief agent

1. All payments of commission to insurance agents shall be made by the insurer direct or by the chief agent, who may make the payment either directly or through a special agent on behalf of the insurer.

2. The chief agent shall employ or cause to be employed for and on behalf of the insurer either directly or through special agents at least six insurance agents in cases where the business in force of the insurer is less than one crore of rupees and in any other case at least twelve agents each of whom will procure in each calendar year new business amounting to not less than ten thousand rupees.

3. Save as provided in respect of cases specified in clause 7 of this Part, the remuneration payable to the chief agent in respect of life insurance business effected through him for the insurer shall only be in the form of an overriding commission.

4. In the event of the chief agent failing in two successive calendar years to comply with the requirements of clause 2, he shall forfeit to the insurer one-half of the total remuneration payable to him by the insurer for those years.

5. In the event of the chief agent failing to comply with the requirements of clause 2 in four successive calendar years, the contract shall, without prejudice to the provisions of clause 4, terminate on the 31st day of March immediately following the last of such calendar years.

6. Not more than one intermediary to be remunerated by the insurer concerned, whether on a salary basis or by way of commission, shall be employed between the chief agent and any insurance agent, but the chief agent may employ as many persons as he thinks fit on a salary basis, provided such salaries are paid out of his overriding commission.

7. In cases where the commission payable on a policy of life insurance effected through an insurance agent working under a chief agent is stopped on or after the 1st day of January, 1949 and not paid to the insurance agent, an amount not exceeding one-quarter of such commission payable to the insurance agent concerned shall also be payable to the chief agent, if he continues to render service in connection with that policy and if such commission is otherwise payable to him.

PART C

[See section 42C (4)]

Terms deemed to be included in every contract between an insurer carrying on life insurance business and a special agent or between a chief agent and a special agent

1. All payments of commission to insurance agents shall be made by the insurer direct or, on behalf of the insurer, either by the chief agent under whom the special agent is working or by the special agent.

2. The special agent shall employ at least two insurance agents and shall procure or cause to be procured through insurance agents employed under him in each calendar year new business amounting to not less than fifty thousand rupees assured on which at least the first year's premiums have been paid in full.

3. In the event of the special agent failing in any calendar year to comply with the requirements of clause 2, he shall forfeit to the insurer fifty per cent. of the total remuneration payable to him by the insurer, or, as the case may be, by the chief agent, for that year.

4. In the event of the special agent failing to comply with the requirements of clause 2 in two successive calendar years, the contract shall, without prejudice to the provisions of clause 8 of this Part terminate on the 31st day of March immediately following the second calendar year.

5. In the event of the special agent procuring life insurance business without utilising the services of an insurance agent, the special agent shall be entitled only to the commission that is ordinarily payable in respect of business so procured to an insurance agent.

6. The remuneration payable to the special agent in respect of policies of life insurance procured by him through insurance agents shall only be in the form of an overriding commission.

Explanation.—In this Schedule “business in force” means the total sum assured with bonuses, without taking into account reinsurances, ceded or accepted, by an insurer in respect of the whole of the life insurance business on the last working day of the calendar year or the period covered by the revenue account furnished by such insurer under clause (b) of sub-section (2) of section 16, as the case may be, preceding the calendar year in question.”

66. **Repeals and savings.**—(1) The Insurance (Amendment) Ordinance, 1950 (VI of 1950), is hereby repealed.

(2) If immediately before the commencement of the Insurance (Amendment) Act, 1950, there is, in force in any Part B State to which the Insurance Act, 1938 (IV of 1938), now extends any law corresponding to that Act, that law also shall stand repealed.

(3) Notwithstanding the repeal by this Act of the Insurance (Amendment) Ordinance, 1950, or of any law corresponding to the Insurance Act, 1938 (IV of 1938), in force in any Part B State, anything done or any action taken in the exercise of any power conferred by that Ordinance or law shall be deemed to have been done or taken in the exercise of the powers conferred by this Act, and any penalty incurred or proceeding commenced under that Ordinance or law shall be deemed to be a penalty incurred or proceeding commenced under the Insurance Act, 1938, as if that Act, as now amended, were in force on the day on which such thing was done, action taken, penalty incurred or proceeding commenced.

THE INDUSTRIAL DISPUTES (APPELLATE TRIBUNAL) ACT, 1950

No. XLVIII of 1950

An Act to provide for the establishment of an Appellate Tribunal in relation to industrial disputes and for certain matters incidental thereto.

[20th May, 1950.]

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title and extent.—(1) This Act may be called the Industrial Disputes (Appellate Tribunal) Act, 1950.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

2. Definitions.—In this Act, unless the context otherwise requires—

(a) “Appellate Tribunal” means the Labour Appellate Tribunal constituted under section 4;

(b) “Chairman” means the Chairman of the Appellate Tribunal;

(c) “industrial tribunal” means—

(i) any Industrial Tribunal constituted under the Industrial Disputes Act, 1947 (XIV of 1947); or

(ii) in relation to cases where an appeal lies from any court, wage board or other authority set up in any State under any law relating to the adjudication of industrial disputes made, whether before or after

the commencement of this Act, by the legislative authority of the State to any other court, board or authority set up in the State under such law, that court, board or authority exercising appellate jurisdiction within the State; or

(iii) in relation to other cases, where no appeal lies under any law referred to in sub-clause (ii), any court, board or other authority set up in any State under such law;

(d) "member" means a member of the Appellate Tribunal;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment and includes—

(i) such allowances (including dearness allowance) as the workman is for the time being entitled to;

(ii) the value of any house accommodation, or of supply of light, water, medical attendance or other amenity or of any service or of any concessional supply of food grains or other articles;

(iii) any travelling concession;

but does not include—

(i) any contribution paid or payable by the employer to any pension fund or provident fund;

(ii) any gratuity payable on discharge;

(g) the expressions "appropriate Government", "employer", "lock-out", "strike" and "workman" have the meanings respectively assigned to them in section 2 of the Industrial Disputes Act, 1947 (XIV of 1947).

3. Effect on other laws.—The provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any such law.

CHAPTER II

THE LABOUR APPELLATE TRIBUNAL AND ITS CONSTITUTION AND FUNCTIONS

4. Constitution of the Appellate Tribunal.—The Central Government may, by notification in the Official Gazette and with effect from a date specified therein, constitute a Labour Appellate Tribunal for hearing appeals from the awards or decisions of industrial tribunals in accordance with the provisions of this Act.

5 Composition of the Appellate Tribunal and term of office of its members.—

(1) The Appellate Tribunal shall consist of a Chairman and such number of other members as the Central Government may, from time to time, think fit to appoint.

(2) Every member of the Appellate Tribunal shall be a person who—

(a) is or has been a Judge of a High Court; or

(b) is qualified for appointment as a Judge of a High Court; or

(c) has been a member of an industrial tribunal for not less than two years:

Provided that the appointment to the Appellate Tribunal of any person not qualified under clause (a) or clause (c) shall be made in consultation with the Supreme Court.

(3) A member shall, unless otherwise specified in the order of appointment, hold office for a term of five years from the date on which he enters upon his office and shall, on the expiry of the term of his office, be eligible for reappointment:

Provided that no member shall hold office after he has attained the age of sixty-five years.

(4) A member shall be entitled to such salary and allowances and to such rights in respect of leave and pensions as may be prescribed.

Provided that the salary of a member shall not be varied to his disadvantage after his appointment.

6. Seat of the Appellate Tribunal.—The Appellate Tribunal shall have its principal seat at such place as the Central Government may, by notification in the Official Gazette, appoint.

7. Jurisdiction of the Appellate Tribunal.—(1) Subject to the provisions of this section, an appeal shall lie to the Appellate Tribunal from any award or decision of an industrial tribunal if—

(a) the appeal involves any substantial question of law; or

(b) the award or decision is in respect of any of the following matters, namely:—

(i) wages,

(ii) bonus or travelling allowance,

(iii) any contribution paid or payable by the employer to any pension fund or provident fund,

(iv) any sum paid or payable to, or on behalf of, the workman to defray special expenses entailed on him by the nature of his employment,

(v) gratuity payable on discharge,

(vi) classification by grades,

(vii) retrenchment of workmen,

(viii) any other matter which may be prescribed.

(2) No appeal shall lie from—

(a) any award made by the Industrial Tribunal set up under the Industrial Disputes Act, 1947 (XIV of 1947), by the notification of the Government of India in the Ministry of Labour, No. L.R. 2(205), dated the 18th June, 1949; or

(b) any award or decision of an industrial tribunal made with the consent of parties or from any settlement arrived at between the parties in the course of conciliation proceedings, whether before a conciliation officer or a conciliation board or any other authority or from any decision of an arbitrator appointed under any law with the consent of parties to settle the dispute.

8. Constitution of Benches of the Appellate Tribunal.—(1) The Chairman may constitute as many Benches of the Appellate Tribunal as may be deemed necessary for the purpose of carrying out the functions and exercising the powers of the Appellate Tribunal.

(2) Each Bench shall consist of not less than two members, of whom one may be appointed as the President of the Bench.

(3) A Bench shall sit at such place or places as may be specified by the Chairman by notification in the Official Gazette:

Provided that the Bench may, if it is satisfied that it will tend to the general convenience of the parties or witnesses in any particular case, sit at any other place.

(4) The Chairman may, from time to time, allot any case or any specified class of cases to any Bench and may also from time to time transfer any case or any specified class of cases from one Bench to another.

9. Powers and procedure of the Appellate Tribunal.—(1) The Appellate Tribunal shall have the same powers as are vested in a civil court, when hearing an appeal, under the Code of Civil Procedure, 1908 (Act V of 1908).

(2) Without prejudice to the generality of the provisions contained in sub-section (1), the Appellate Tribunal may, after hearing the appellant, dismiss the appeal if, in its judgment, there is no sufficient ground for proceeding with the appeal and in such cases, the Appellate Tribunal shall briefly record its reasons for so doing.

(3) The Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898) and any proceeding before an Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 199 and 228 of the Indian Penal Code (Act XLV of 1860).

(4) The Appellate Tribunal may, if it so thinks fit, appoint, after consulting the parties to the dispute and the appropriate Government, one or more persons as assessors to advise it in any proceeding before it.

(5) The Appellate Tribunal shall, after hearing the appeal, pronounce its decision either at once or on some future date to which the appeal is adjourned for that purpose.

(6) The decision shall be in writing and signed by the members of the Appellate Tribunal hearing the appeal.

(7) The Appellate Tribunal may confirm, vary or reverse the award or decision appealed from and may pass such orders as it may deem fit, and where the award or decision is reversed or varied, the decision of the Appellate Tribunal shall state the reliefs to which the appellant is entitled.

(8) In the event of any difference of opinion among the members of a Bench, the opinion of the majority shall prevail, but where there is no such majority, the President of the Bench shall refer to the Chairman either the whole appeal or the particular point or points on which there has been difference of opinion among the members of the Bench and on such reference, the Chairman shall either hear the matter himself or transfer it to any other member and the decision thereon of the Chairman or the other member, as the case may be, shall prevail.

(9) The Appellate Tribunal shall send a copy of the decision to the industrial tribunal concerned and to the appropriate Government, as soon as practicable, within one week from the date of the decision.

(10) The Appellate Tribunal shall follow such procedure as may be prescribed, and subject thereto, it may, by order, regulate its practice and procedure and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), shall, so far as they are not inconsistent with this Act or the rules or orders made thereunder, apply to all proceedings before the Appellate Tribunal.

(11) Subject to the rules made under this Act, the costs of, and incidental to, any proceeding before the Appellate Tribunal shall be in the discretion of the Appellate Tribunal, and the Appellate Tribunal shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid and to give all necessary directions for the purposes aforesaid, and such costs may be recovered in the manner provided for in sub-section (1) of section 20.

10. Limitation for filing appeals.—An appeal under this Act may be preferred within thirty days—

(i) from the date of the publication of the award or decision, where such publication is provided for by the law under which that award or decision is made; or

(ii) from the date of making the award or decision, where there is no provision for such publication:

Provided that the Appellate Tribunal may entertain the appeal after the expiry of the said period of thirty days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

11. Form of appeal.—An appeal under this Act shall be presented in the form of a memorandum setting forth, concisely and under distinct heads, the grounds of objection to the award or decision appealed from.

12. Presentation of appeal.—An appeal under this Act against any award or decision of an industrial tribunal may be presented to the Appellate Tribunal by—

(i) any party which is aggrieved by the award or decision; or

(ii) the appropriate Government or the Central Government, where it is not the appropriate Government, whether or not such Government is a party to the dispute.

13. Right of the Central Government and of the appropriate Government to appear before the Appellate Tribunal.—The appropriate Government or the Central Government, where it is not the appropriate Government, may, whether or not such Government is a party to the appeal, appear in any proceeding before the Appellate Tribunal and thereupon, such Government shall have the right to be heard as if it were a party to that appeal.

14. Stay of award or decision by the Appellate Tribunal.—Where an appeal is preferred, the Appellate Tribunal may, after giving the parties an opportunity of being heard, stay, for reasons to be recorded, the implementation of the award or decision or any part thereof for such period and on such conditions as it thinks fit.

Provided that no such order for stay shall be made unless the Appellate Tribunal is satisfied that the implementation of the award or decision may have serious repercussions on the industry concerned or other industries or on the workmen employed in such industry or industries.

15. Commencement of decision of the Appellate Tribunal.—(1) The decision of the Appellate Tribunal shall be enforceable on the expiry of thirty days from the date of its pronouncement:

Provided that where the appropriate Government is of opinion that it would be inexpedient on public grounds to give effect to the whole or any part of the decision, the appropriate Government may, before the expiry of the said period of thirty days, by order in the Official Gazette, either reject the decision or modify it.

(2) Where the appropriate Government rejects or modifies any decision under the proviso to sub-section (1), it shall, on the first available opportunity, lay that decision together with its reasons for rejecting or modifying the same before the Legislative Assembly of the State, or where the appropriate Government is the Central Government, before Parliament.

16. Effect of decision of the Appellate Tribunal.—Where an appeal from any award or decision of an industrial tribunal, the Appellate Tribunal modifies in any manner whatsoever that award or decision, the decision of the Appellate Tribunal shall, when it becomes enforceable under section 15, be deemed to be substituted for that award or decision of the industrial tribunal and shall have effect for all purposes in the same manner and in accordance with the same law under which the award or decision of the industrial tribunal was made as if the industrial tribunal made the award or decision as modified by the decision of the Appellate Tribunal.

17. Commencement and conclusion of appeal.—An appeal before the Appellate Tribunal shall be deemed to have commenced on the date of the filing of the appeal and such appeal shall be deemed to have concluded on the date on which the decision of the Appellate Tribunal becomes enforceable under section 15.

CHAPTER III

CERTAIN PROVISIONS RELATING TO INDUSTRIAL TRIBUNALS SET UP UNDER OTHER LAWS

18. Commencement of award or decision of industrial tribunal.—(1) Subject to the provisions of this Act, the award or decision of any industrial tribunal shall, notwithstanding anything contained in any law, be enforceable on the expiry of thirty days—

(i) from the date of the publication of the award or decision, where such publication is provided for by the law under which that award or decision is made, or

(ii) from the date of making the award or decision, where there is no provision for such publication:

Provided that in cases where the award or decision is not appealable under this Act, and where the appropriate Government is a party to the dispute and is of opinion that it would be inexpedient on public grounds to give effect to the whole or any part of the award or decision, it may, before the expiry of the said period of thirty days, by order in the Official Gazette, either reject or modify the award or decision.

(2) Where the appropriate Government rejects or modifies any award or decision under the proviso to sub-section (1), it shall, on the first available opportunity, lay that award or decision together with its reasons for rejecting or modifying the same before the Legislative Assembly of the State, or where the appropriate Government is the Central Government, before Parliament.

(3) Subject to the provisions of sub-section (1) the award or decision of any industrial tribunal shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into

operation on the date on which that award or decision becomes enforceable under sub-section (1).

19. Exclusion of certain period in the computation of the period of operation of any award or decision of industrial tribunal.—In the computation of the period of operation of any award or decision of any industrial tribunal, the period during which the implementation of that award or decision is stayed by the Appellate Tribunal shall be excluded.

20. Recovery of money due from an employer under an award or decision.—

(1) Any money due from an employer under any award or decision of an industrial tribunal may be recovered as arrears of land revenue or as a public demand by the appropriate Government on an application made to it by the person entitled to the money under that award or decision.

(2) Where any workman is entitled to receive from the employer any benefit under an award or decision of an industrial tribunal which is capable of being computed in terms of money, the amount at which such benefit should be computed may, subject to the rules made under this Act, be determined by that industrial tribunal, and the amount so determined may be recovered as provided for in sub-section (1).

(3) For the purpose of computing the money value of a benefit, the industrial tribunal may, if it so thinks fit, appoint a commissioner, who shall, after taking such evidence as may be necessary, submit a report to the industrial tribunal, and the said tribunal shall determine the amount after considering the report of the commissioner and other circumstances of the case.

21. Maintenance of records by industrial tribunals.—Every industrial tribunal shall, in respect of any case from which an appeal would lie under this Act, maintain, subject to the rules made under this Act, a record of the proceedings before it including the statements of parties and witnesses and relevant documents.

CHAPTER IV

MISCELLANEOUS

22. Conditions of service, etc., to remain unchanged during a certain period.—During the period of thirty days allowed for the filing of an appeal under section 10 or during the pendency of any appeal under this Act, no employer shall]—

(a) alter, to the prejudice of the workmen concerned in such appeal, the conditions of service applicable to them immediately before the filing of such appeal, or

(b) discharge or punish, whether by dismissal or otherwise, any workmen concerned in such appeal,

save with the express permission in writing of the Appellate Tribunal.

23. Special provision for decision whether conditions of service, etc. changed during pendency of proceedings.—Where an employer contravenes the provisions of section 22 during the pendency of proceedings before the Appellate Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Appellate Tribunal and on receipt of such complaint, the Appellate Tribunal shall decide the complaint as if it were an appeal pending before it, in accordance with the provisions of this Act and shall pronounce its decision thereon and the provisions of this Act shall apply accordingly.

24. Prohibition of strikes and lock-outs.—Notwithstanding anything contained in any law for the time being in force, no workman who is employed in any industrial establishment shall go on strike and no employer of any such workman shall declare a lock-out—

(a) during the period of thirty days allowed for the filing of an appeal under section 10; or

(b) during the pendency of an appeal before the Appellate Tribunal.

25. Illegal strikes and lock-outs.—A strike or lock-out shall be illegal, if it is declared, commenced or continued in contravention of the provisions of section 24.

26. Penalty for illegal strikes and lock-outs.—(1) Any workman who commences, continues, or otherwise acts in furtherance of, a strike which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both.

(2) Any employer who commences, continues, or otherwise acts in furtherance of a lock-out which is illegal under this Act shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to one thousand rupees, or with both.

27. Penalty for instigation, etc.—Any person who instigates or incites others to take part in, or otherwise acts in furtherance of, a strike or lock-out, which is illegal under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

28. Penalty for giving financial aid to illegal strikes and lock-outs.—Any person who knowingly expends or applies any money in furtherance or support of any strike or lock-out which is illegal under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

29. Penalty for other offences.—(1) Any employer who contravenes the provisions of section 22 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

(2) Whoever contravenes any of the provisions of this Act or any rule made thereunder shall, if no other penalty is elsewhere provided by or under this Act for such contravention, be punishable with fine which may extend to one hundred rupees.

30. Powers of the Appellate Tribunal in relation to contempts.—(1) If any person—

(a) when ordered by an industrial tribunal or the Appellate Tribunal to produce or deliver up any document, being legally bound, intentionally omits to do so, or

(b) when required by an industrial tribunal or the Appellate Tribunal to bind himself by an oath or affirmation to state the truth, refuses to do so, or

(c) being legally bound to state the truth on any subject to an industrial tribunal or the Appellate Tribunal, refuses to answer any question put to him touching such subject by such industrial tribunal or the Appellate Tribunal, or

(d) refuses to sign any statement made by him when required to do so by an industrial tribunal or the Appellate Tribunal, or

(e) intentionally offers any insult or causes any interruption to an industrial tribunal or the Appellate Tribunal at any stage of its judicial proceeding,

he shall be deemed to be guilty of contempt of such industrial tribunal or the Appellate Tribunal, as the case may be.

(2) If any person commits any act or publishes any writing, which is calculated to improperly influence an industrial tribunal or the Appellate Tribunal or to bring such industrial tribunal or the Appellate Tribunal or any member thereof into disrepute or contempt or to lower its or his authority, or to interfere with the lawful process of any such industrial tribunal or the Appellate Tribunal, such person shall be deemed to be guilty of contempt of such industrial tribunal or the Appellate Tribunal, as the case may be.

(3) The Appellate Tribunal shall have and exercise the same jurisdiction, power and authority, in accordance with the same procedure and practice, in respect of contempts of itself and of all the industrial tribunals as the High Courts have and exercise in respect of themselves and courts subordinate to them under the Contempt of Courts Act, 1926 (XX of 1926).

31. Offence by companies, etc.—Where a person committing an offence under this Act is a company, or other body corporate, or any association of persons (whether incorporated or not), every director, manager, secretary, agent or other officer or person concerned with the management thereof shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

32. Cognizance of offences.—(1) No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or under the authority of the appropriate Government or by an officer empowered in this behalf by such Government, by a general or special order.

(2) No court inferior to that of a presidency magistrate or a magistrate of the first class shall try any offence punishable under this Act.

33. Representation of parties.—(1) A workman who is a party to an appeal shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of a registered trade union of which he is a member;

(b) an officer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed.

(2) An employer who is a party to an appeal shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) A party to a proceeding under this Act may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Appellate Tribunal.

34. Amendment of Act XIV of 1947.—The Industrial Disputes Act, 1947 (XIV of 1947) shall be amended in the manner specified in the Schedule.

35. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the manner in which an appeal may be preferred and the form of appeal; the matters in respect of which the Appellate Tribunal may have jurisdiction;

(b) the fees to be paid and the procedure to be followed in relation to such appeal;

(c) costs, and the manner in which they may be recovered;

(d) the persons who may be appointed as commissioners under section 20; their powers and duties and the fees, if any, to be paid to the commissioners;

(e) the records to be maintained under section 21 and the manner in which they will be maintained;

(f) the manner in which workmen or employers may be represented before the Appellate Tribunal;

(g) any other matter which has to be or may be prescribed.

THE SCHEDULE

(See section 34)

AMENDMENTS TO THE INDUSTRIAL DISPUTES ACT, 1947 (XIV OF 1947).

1. For sub-section (2) of section 1, the following sub-section shall be substituted, namely:—

“(2) It extends to the whole of India except the State of Jammu and Kashmir.”

2. After sub-section (6) of section 11, the following sub-sections shall be inserted, namely:—

“(7) Subject to the rules made under this Act, the costs of, and incidental to, any proceeding before a Tribunal shall be in the discretion of that Tribunal, and the Tribunal shall have full power to determine by and to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid, and such costs may, on application made to it by the person entitled, be recovered as arrears of land revenue or as a public demand by the appropriate Government.

(8) Every Tribunal shall be deemed to be a civil court for the purposes of sections 480 and 482 of the Code of Criminal Procedure, 1898 (Act V of 1898).”

3. For section 15, the following section shall be substituted, namely:—

“15. *Duties of Tribunals.*—Where an industrial dispute has been referred to a Tribunal for adjudication, it shall hold its proceedings expeditiously and shall, as soon as practicable on the conclusion thereof, submit its award to the appropriate Government.”

4. After section 17, the following section shall be inserted, namely:—

“17A. *Commencement of the award.*—(1) The award of a Tribunal shall become enforceable on the expiry of thirty days from the date of its publication under section 17:

Provided that in cases where the award is not appealable and where the appropriate Government is a party to the dispute and is of opinion that it will be inexpedient on public grounds to give effect to the whole or any part of the award, it may, before the expiry of the said period of thirty days, by order in the Official Gazette, either reject the award or modify it.

(2) Where the appropriate Government rejects or modifies any award under the proviso to sub-section (1), it shall, on the first available opportunity, lay that award together with its reasons for rejecting or modifying the same before the Legislative Assembly of the State, or where the appropriate Government is the Central Government, before Parliament.

(3) Subject to the provisions of sub-section (1), the award of a Tribunal shall come into operation with effect from such date as may be specified therein, but where no date is so specified, it shall come into operation on the date when the award becomes enforceable under sub-section (1).”

5. In section 18, for the words, brackets and figures “an award which is declared by the appropriate Government to be binding under sub-section (2) of section 15”, the words “an award which has become enforceable” shall be substituted.

6. For sub-section (3) of section 19, the following sub-sections shall be substituted, namely:—

“(3) An award shall, subject to the provisions of this section, remain in operation for a period of one year:

Provided that the appropriate Government may reduce the said period and fix such period as it thinks fit:

Provided further that the appropriate Government may, before the expiry of the said period, extend the period of operation by any period not exceeding one year at a time as it thinks fit so, however, that the total period of operation of any award does not exceed three years from the date on which it came into operation.

(4) Where the appropriate Government, whether of its own motion or on the application of any party bound by the award, considers that since the award was made, there has been a material change in the circumstances on which it was based, the appropriate Government may refer the award or a part of it to a Tribunal for decision whether the period of operation should not, by reason of such change, be shortened and the decision of the Tribunal on such reference shall, subject to the provision for appeal, be final.

(5) Nothing contained in sub-section (3) shall apply to any award which by its nature, terms or other circumstances does not impose, after it has been given effect to, any continuing obligation on the parties bound by the award.

(6) Notwithstanding the expiry of the period of operation under sub-section (3), the award shall continue to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award.

(7) In the computation of the period of operation of an award under sub-section (3), the period during which the implementation of the award is stayed by the Labour Appellate Tribunal constituted under the Industrial Disputes (Appellate Tribunal) Act, 1950, shall be excluded."

7. For section 33, the following section shall be substituted, namely:—

"33. *Conditions of service, etc., to remain unchanged during pendency of proceedings.*—During the pendency of any conciliation proceedings or proceedings before a Tribunal in respect of any industrial dispute, no employer shall—

(a) alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or

(b) discharge or punish, whether by dismissal or otherwise, any workman concerned in such dispute,

save with the express permission in writing of the conciliation officer, Board or Tribunal, as the case may be."

8. After section 33, the following new section shall be inserted, namely:—

"33A. *Special provision for adjudication as to whether conditions of service, etc. changed during pendency of proceedings.*—Where an employer contravenes the provisions of section 33 during the pendency of proceedings before a Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner to such Tribunal and on receipt of such complaint that Tribunal shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit its award to the appropriate Government and the provisions of this Act shall apply accordingly."

9. For section 36, the following section shall be substituted, namely:—

"36. *Representation of parties.*—(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of a registered trade union of which he is a member;

(b) an officer of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by an officer of any trade union connected with, or by any other workman employed in, the industry in which the worker is employed and authorised in such manner as may be prescribed

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by—

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorised in such manner as may be prescribed.

(3) No party to a dispute shall be entitled to be represented by a legal practitioner in any conciliation proceedings under this Act or in any proceedings before a Court.

(4) In any proceeding before a Tribunal, a party to a dispute may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Tribunal."

K. V. K. SUNDARAM,
Secy. to the Govt. of India.